Calendar No. 750

99TH CONGRESS
2d Session

SENATE

REPORT
99-348

SIXTH OMNIBUS BUDGET RECONCILIATION ACT, 1986

REPORT

OF THE

COMMITTEE ON THE BUDGET
UNITED STATES SENATE

TO ACCOMPANY

S. 2706

A BILL TO PROVIDE FOR RECONCILIATION PURSUANT TO SECTION 2 OF THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 1987 (S. CON. RES. 120, NINETY-NINTH CONGRESS)

together with
ADDITIONAL AND MINORITY VIEWS

JULY 31 (legislative day, JULY 28), 1986.—Ordered to be printed

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SIXTH OMNIBUS BUDGET RECONCILIATION ACT, 1986

JULY 31 (legislative day, JULY 28), 1986.—Ordered to be printed

Mr. DOMENICI, from the Committee on the Budget, submitted the following

REPORT

[To accompany S. 2706]

The Committee on the Budget, to which were submitted recommendations pursuant to section 2 of the Concurrent Resolution on the Budget for Fiscal Year 1987 (S. Con. Res. 120, Ninety-ninth Congress), having considered the same, reports favorably thereon and recommends that the bill embodying those recommendations do pass.

62-256 O

VIEWS OF THE COMMITTEE ON THE BUDGET

Reconciliation is an important tool to restrain Federal spending. It is authorized and described in Title III of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93-344). The reconciliation procedure allows Congress to consider changes in spending and revenues within the purview of several committees in a single bill, while reserving to those committees the power to determine what changes will be made in laws within their respective jurisdictions.

On July 26, 1986, Congress adopted S. Con. Res 120, the Concurrent Resolution on the Budget for Fiscal Year 1987. That resolution mandated major reductions in the staggering budget deficits now facing the United States. Revenue and spending targets for the fiscal years 1987 through 1989 contained in the resolution will lower deficits over the next 3 years by $157.4 billion.

In order to realize the fiscal policy set forth in S. Con. Res. 120, Congress included in that resolution instructions to eight Senate committees and nine House committees to recommend changes in laws in their jurisdiction which would reduce Federal spending by $10.2 billion in authority and $11.6 billion in outlays during FY 1987 through FY 1989. In addition, the Senate Finance Committee was instructed to recommend legislation to reduce outlays by $4.1 billion and to increase revenues by $8.5 billion over that 3-year period, and the House Ways and Means Committee was instructed to recommend legislation to reduce the deficit by $12.6 billion over the same period.

All reconciled committees that were instructed to submit their recommendations to the Senate Budget Committee have met their deadlines. The Senate Budget Committee is responsible for combining these legislative recommendations into a single bill and for reporting these recommendations to the Senate without substantive revision. This report summarizes the views of the Committee on the Budget on the material submitted by the individual committees.

RECONCILIATION IS A NECESSARY TOOL TO ACHIEVE SAVINGS

The Senate Budget Committee believes that the reconciliation process as used by the Congress since 1981 is a necessary procedure through which to achieve many of the dramatic reductions in Federal spending mandated by the Congress when it approved S. Con. Res. 120, the Concurrent Budget Resolution for FY 1987. Reconciliation allows the individual authorizing committees to work their will on programs within their jurisdiction, as the rules of the

Senate provide. This safeguard insures that the Senate will have the best judgement of individual committees on restraint of Federal programs.

THIS BILL AND REPORT

Pursuant to section 310(b)(2) of the Budget Act, the Budget Committee reports herewith the recommendation of 9 Senate committees, without any substantive revision, and with a recommendation that the bill do pass.

NONBUDGETARY PROVISIONS

The Budget Committee believes that the inclusion of non-budgetary provisions in a reconciliation bill is inconsistent with the spirit and letter of the Budget Act, damages the credibility of the budget process, and could have the effect of circumventing Rule XXII of the Standing Rules of the Senate.

The problem of so-called "extraneous matters" first became a major issue in 1981, during Senate consideration of S. 1377, the Omnibus Reconciliation Act of 1981. A number of provisions which were determined to be clearly extraneous were stricken from that bill. A special time agreement was entered into with respect to other provisions which some Senators contended were extraneous. The problem of extraneous provisions has increased in gravity since that time.

On April 7, 1986, with the enactment of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (Public Law 99-272), a new procedure was instituted for the identification and elimination of extraneous material.

Section 20001 of COBRA provides a point of order against extraneous material. A provision will be considered extraneous if it (1) produces no change in outlays or revenues (with certain exceptions), (2) increases outlays or decreases revenues, and the committee's title does not meet its instructions, (3) is within the jurisdiction of another committee, or (4) produces changes in outlays or revenues which are "merely incidental" to its non-budgetary components.

This point of order can be wavied only by the vote of 60 Senators. The same voting margin is also necessary to successfully appeal the ruling of the Chair on this issue.

The Committee intends to pursue the remedy provided by section 20001, in the interest of preventing further abuse of the reconciliation process, and to protect the institutional traditions of the Senate.

RECONCILIATION PROCEDURE

Just as the Budget Act provides for the reconciliation procedure, it provides in sections 310(e) and 305 special rules for the consideration of reconciliation bills.

The following rules apply to the consideration of a reconciliation bill in the Senate:

First, debate on any reconciliation bill and all amendments thereto and debatable motions and appeals in connection therewith is limited to 20 hours.

Second, debate on the bill (including amendments, debatable motions, and appeals) shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

Third, debate on any amendment is limited to 2 hours, divided between the mover of the amendment and the manager of the bill.

Fourth, debate on any amendment to an amendment, debatable motion, or appeal is limited to 1 hour, divided between the mover and the manager.

Fifth, a motion to limit debate to less than 20 hours is not debatable.

Sixth, a motion to recommit is not in order unless it contains instructions to report back within a specified time, not to exceed 3 days, and debate on such a motion is limited to 1 hour, divided between the mover and the manager.

Seventh, any germane amendment which amends the bill in more than one place and which achieves or maintains mathematical consistency is always in order.

Eighth, amendments to the bill must be "germane to the provisions of" the legislation. The "germaneness rule" has been interpreted as prohibiting any amendment which introduces "new subject matter."

The instructed committees, therefore, set the parameters of germaneness, as the Budget Committee reports what is submitted to it without any substantive revision.

The "germaneness rule" does not apply to a motion to recommit the bill with instructions to report a specific amendment, if a committee has not complied with its reconciliation instructions, and if the effect of the motion would be to bring the bill into compliance with the reconciliation instructions.

Ninth, an amendment which would cause the bill to reduce outlays by less than the amount instructed, or which would cause the bill to increase revenues by less than the amount instructed, is not in order. An amendment to strike is always in order.

Tenth, an amendment affecting social security benefits is not in order.

Eleventh, floor consideration of the conference report on a reconciliation bill is in order any time after the third day following the day on which the conference report is reported and is available to Senators. Debate on the conference report is limited to 10 hours, divided equally, with debate on any appeal or motion limited to 1 hour divided between the mover and the manager.

SUMMARY OF RECONCILIATION RECOMMENDATIONS

The following tables summarize the savings achieved by the committees instructed by the Congress to make changes in programs in their jurisdiction in order to reduce spending and increase revenues in fiscal years 1987–89. The tables compare the legislation reported by the committees to the reconciliation instruction they received from the Congress.

Table 1 provides an overall comparison of the reported bill to the reconciliation instructions. It shows that the recommendations in the bill achieved $8.1 billion in deficit reductions in fiscal year 1987, which is $1.1 billion less than the instruction to the committees. Over three years, the recommendations save $21.8 billion, which is $2.4 billion below the reconciliation target. Table 2 provides a summary of outlay reductions and revenue increases by Senate committee. Table 3 provides details of the savings within each committee submission.

The dollar amounts in the tables have been estimated by the Congressional Budget Office based on the submissions of the nine committees to the Budget Committee.

Table 1

SUMMARY OF SAVINGS

[In millions of dollars]

	FY 1987	FY 1988	FY 1989	Total FY 1987–89
Recommendations in bill:				
Reductions in budget authority	−831	−3,400	−3,613	−7,844
Reductions in outlays	−5,655	−2,599	−3,469	−11,723
Increase in revenues	2,422	3,835	3,862	10,119
Reduction in deficit	−8,077	−6,434	−7,331	−21,842
Reconciliation instructions to committees:				
Reductions in budget authority	−2,934	−3,491	−3,725	−10,150
Reductions in outlays	−5,668	−4,765	−5,270	−15,703
Increase in revenues	3,500	2,600	2,400	8,500
Reduction in deficit	−9,168	−7,365	−7,670	−24,203

Table 2

SUMMARY OF RECONCILIATION SAVINGS BY COMMITTEE

[In millions of dollars]

		FY 1987	FY 1988	FY 1989	Total FY 1987–89
Agricluture, Nutrition and Forestry.	BA	0	−118	−122	−240
	O	−555	−549	−543	−1,647
Banking, Housing, and Urban Affairs.	BA	762	−470	236	528
	O	−1,658	−381	−390	−2,429
Commerce, Science, and Transportation.	BA	−50	−86	−56	−192
	O	−50	−86	−56	−192
Energy and Natural Resources...	BA	125	200	200	525
	O	−67	179	188	300
Environment and Public Works.	BA	−2,277	−2,748	−3,224	−8,249
	O	−277	−931	−1,534	−2,742
Finance—Spending........................	BA	0	0	0	0
	O	−2,234	−360	−599	−3,193
Finance—Revenues........................	REV	2,422	3,835	3,862	10,119
Governmental Affairs....................	BA	664	64	−144	584
	O	−205	20	−175	−360
Labor and Human Resources......	BA	−55	−250	−514	−819
	O	−609	−499	−371	−1,479
Small Business..............................	BA	0	8	11	19
	O	0	8	11	19

Table 3

DETAIL OF RECONCILIATION SAVINGS BY COMMITTEE

[In millions of dollars]

		FY 1987	FY 1988	FY 1989	Total FY 1987-89
TITLE I					
Agriculture, Nutrition and Forestry					
RDIF loan asset sales	BA	0	−118	−122	−240
	O	−555	−549	−543	−1,647
Total spending reduction	BA	0	−118	−122	−240
	O	−555	−549	−543	−1,647
Total spending instruction	BA	−55	−49	−43	−147
	O	−555	−549	−543	−1,647
TITLE II					
Banking, Housing, and Urban Affairs					
Rural housing loan asset sales	BA	642	0	236	878
	O	−1,158	−500	−500	−2,158
Export-Import bank loan asset sales.	BA	120	−470	0	−350
	O	−500	119	110	−271
Total spending reduction	BA	762	−470	236	528
	O	−1,658	−381	−390	−2,429
Total spending instruction	BA	642	0	164	806
	O	−1,658	−523	−546	−2,727
TITLE III					
Commerce, Science, and Transportation					
Coast Guard user fees	BA	−38	−50	−50	−138
	O	−38	−50	−50	−138
Maritime Title II loan guarantees.	BA	−12	−36	−6	−54
	O	−12	−36	−6	−54

Table 3—Continued

[In millions of dollars]

		FY 1987	FY 1988	FY 1989	Total FY 1987–89
Total spending reduction	BA	−50	−86	−56	−192
	O	−50	−86	−56	−192
Total spending instruction	BA	−50	−50	−50	−150
	O	−50	−50	−50	−150
TITLE IV					
Energy and Natural Resources					
Oil overcharge fund	BA	−100	0	0	−100
	O	−100	0	0	−100
Energy conservation programs	BA	256	256	256	768
	O	64	235	244	543
FERC fees	BA	−31	−56	−56	−143
	O	−31	−56	−56	−143
Total spending reduction	BA	125	200	200	525
	O	−67	179	188	300
Total spending instruction[1]	BA	−1,025	−400	−400	−1,825
	O	−1,217	−421	−412	−2,050
TITLE V					
Environment and Public Works					
Federal-aid highways	BA	−2,240	−2,700	−3,180	−8,120
	O	−190	−910	−1,490	−2,590
EPA fees	BA	−10	−20	−20	−50
	O	−10	−20	−20	−50
NRC fees[2]	BA	−27	−28	−24	−79
	O	−27	−28	−24	−79
Sale of EDA notes	BA	0	0	0	0
	O	−50	27	0	−23
Total spending reduction	BA	−2,277	−2,748	−3,224	−8,249
	O	−277	−931	−1,534	−2,742
Total spending instruction	BA	−1,883	−2,343	−2,823	−7,049
	O	−291	−1,123	−1,674	−3,088

Table 3—Continued

[In millions of dollars]

		FY 1987	FY 1988	FY 1989	Total FY 1987-89
TITLE VI					
Finance Committee: Spending Provisions [3]					
Medicare	BA	0	0	0	0
	O	−2,369	−617	−950	−3,936
Medicaid	BA	0	0	0	0
	O	135	257	351	743
Total spending reduction	BA	0	0	0	0
	O	−2,234	−360	−599	−3,193
Total spending instruction	BA	0	0	0	0
	O	−850	−1,495	−1,790	−4,135
TITLE VI-A					
Finance Committee: Revenue Provisions					
Extend medicare coverage		829	2,151	2,169	5,149
Cigarette tax		1,593	1,684	1,693	4,970
Total revenue increases		2,422	3,835	3,862	10,119
Total revenue instruction		3,500	2,600	2,400	8,500
Total Finance		−4,656	−4,195	−4,461	−13,312
Total Finance instruction		−4,350	−4,095	−4,190	−12,635
TITLE VII					
Governmental Affairs					
Federal employee retirement [4]	BA	664	64	66	794
	O	−205	20	35	−150
Postal subsidy reforms	BA	0	0	−210	−210
	O	0	0	−210	−210
Total spending reduction	BA	664	64	−144	584
	O	−205	20	−175	−360
Total spending instruction	BA	−100	−100	−100	−300
	O	−100	−100	−100	−300

Table 3—Continued

[In millions of dollars]

		FY 1987	FY 1988	FY 1989	Total FY 1987-89
TITLE VIII					
Labor and Human Resources					
Guaranteed student loan program	BA	−55	−235	−505	−795
	O	−30	−185	−465	−680
Education loan asset sales	BA	0	−15	−9	−24
	O	−579	−314	94	−799
Total spending reduction	BA	−55	−250	−514	−819
	O	−609	−499	−371	−1,479
Total spending instruction	BA	−25	−150	−250	−425
	O	−604	−449	−141	−1,194
TITLE IX					
Small Business					
Section 503 loan asset sales	BA	0	8	11	19
	O	0	8	11	19
Total spending reduction	BA	0	8	11	19
	O	0	8	11	19
Total spending instruction	BA	−438	−399	−223	−1,060
	O	−343	−55	−14	−412

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[1] The budget resolution reconciliation instruction to the Senate Energy and Natural Resources Committee assumed legilation would be enacted to recover $1.9 billion in oil overcharges funds over the next three years. On July 7th, the United States District Court for Kansas approved the Stripper Well settlement, which will result in the immediate distribution of a portion of these overcharge funds to the States. In accordance with language included in the conference report on the FY 1986 budget resolution, the Energy Committee will not be held accountable for the full amount of their instruction.

[2] CBO scores NRC fees as a revenue increase. They are shown on this table as an offsetting receipt to maintain comparability with the Committee instruction.

[3] The Finance Committee did not receive intructions to reconcile budget authority.

[4] Savings include a small revenue decrease in FY 1987, which is shown as an outlay increase on this table to maintain comparability with the committee instruction.

RULE XXVI

In compliance with Rule XXVI, paragraphs 11(b) (regulatory impact) and 12 (comparative prints of proposed legislation) of the Standing Rules of the Senate, it is the opinion of the Budget Committee that it is necessary to dispense with these requirements of the rule in order to expedite the business of the Senate.

However, with respect to any committee which has submitted reconciliation recommendations and has transmitted to the Budget Committee a regulatory impact statement or a comparative print of proposed legislation, this material is incorporated in this report without revision, in the title-by-title analysis.

ROLLCALL VOTES IN COMMITTEE

Votes taken during Committee consideration of this legislation were as follows:

Domenici motion to report to the Senate the Sixth Omnibus Budget Reconciliation Act, 1986 with a favorable recommendation.

YEAS

Mr. Domenici
Mr. Armstrong
Mr. Boschwitz
Mr. Hatch
Mr. Andrews
Mr. Grassley
Mr. Kasten
Mr. Quayle
Mr. Gorton
Mr. Danforth
Mr. Chiles
Mr. Johnston
Mr. Sasser
Mr. Hart (by proxy)
Mr. Riegle (by proxy)
Mr. Moynihan (by proxy)
Mr. Exon (by proxy)
Mr. Lautenberg

NAYS

Mr. Hollings (by proxy)

ADDITIONAL VIEWS OF SENATOR JIM SASSER

The bill before the Committee represents a significant effort to reduce the federal budget deficit. Over the next three years, this reconciliation bill will realize over $21.8 billion in deficit reduction savings, more than $8 billion in FY 1987 alone.

Although these savings are somewhat short of the $24 billion reconciliation target envisioned in the recently passed budget resolution, it does represent a crucial first step in getting our runaway deficit under control.

The Budget Committee has voted to report this reconciliation package to the Senate floor with a favorable recommendation. Since I have serious reservations over some provisions in the bill I would have preferred to have reported the bill out of committee with no recommendation at all. Let there be no mistake, my vote in favor of reporting this bill out of committee should in no way be construed to indicate support for the bill in it's entirety. However, I have been assured that there will be ample opportunity on the Senate floor to address what appear to be some gross inequities in the current bill. For this reason, I will support getting it to the Senate floor.

I am very concerned over the proposed eight cent per pack increase in the excise tax on cigarettes. Since tobacco plays a central role in the economic well-being of Tennessee, I have a special interest in this matter. It is clear to me that the more than 38,000 tobacco farmers in Tennessee will suffer because of this increase. These farm families are already struggling with some of the hardest economic times in memory. Tobacco farmers are also caught in the grip of the worst drought in over a century. This tax increase will only aggrevate the economic devastation which is occuring throughout much of the southeastern United States.

In addition, this proposal makes a mockery of the tax reform rhetoric which has swept the nation. We lent our support to the Senate's tax refrom proposal because it promised tax relief to millions of middle-income American taxpayers. This fundamental underpinning of tax reform seems to have been quickly forgotten by many. The ink is not yet dry on a tax reform bill and already we are seeing a highly regressive tax increase contained in this reconciliation bill.

The proposed increase in the cigarette excise tax is both unsound economic policy and an undercutting of the goals of the tax reform bill recently approved by the Senate. It is my hope that we will strike this offensive provision from the reconciliation package when it is considered on the Senate floor.

JIM SASSER

TITLE-BY-TITLE ANALYSIS

The following is a title-by-title analysis of the legislation. In each case, the analyses of the respective committees are presented without revision. In some instances, the final cost estimates by the Congressional Budget Office were not available to the committees when they made their submissions to the Budget Committee. In those cases, the CBO cost estimates have been added to the materials submitted by the committees.

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Title I

JESSE HELMS, NORTH CAROLINA, CHAIRMAN

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MITCH McCONNELL, KENTUCKY

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DAVID L. BOREN, OKLAHOMA
ALAN J. DIXON, ILLINOIS
HOWELL HEFLIN, ALABAMA
TOM HARKIN, IOWA

United States Senate

COMMITTEE ON
AGRICULTURE, NUTRITION, AND FORESTRY
WASHINGTON, DC 20510-6000

July 25, 1986

The Honorable Pete V. Domenici
Chairman
Senate Committee on the Budget
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed pursuant to the reconciliation instructions in section 2(1) of the First Concurrent Resolution on the Budget for Fiscal Year 1987 (S. Con. Res. 120) are the recommendations of the Senate Committee on Agriculture, Nutrition, and Forestry for reducing spending under laws within its jurisdiction.

In accordance with the instructions, this Committee has prepared (1) the legislative language to effect the reductions in budget authority and outlays as required by the resolution, and (2) an explanation of those reductions for inclusion in your report on the reconciliation legislation.

The Congressional Budget Office estimates the changes in law adopted by this Committee, and included in this recommendation, would reduce spending in the following manner per fiscal year:

Fiscal Year	Budget Authority	Outlays
1987	----	$555,000,000
1988	$118,000,000	$549,000,000
1989	$122,000,000	$543,000,000

S. Con. Res. 120 instructed this Committee to make changes in legislation that would result in outlay savings of $1.647 billion over the three fiscal years, 1987 through 1989, and savings in budget authority of $147 million over the same period. As the preceding table demonstrates, the recommendations for savings adopted by this Committee on July 16 are estimated by the Congressional Budget Office to meet the instructions and, in the case of budget authority, to exceed the instructions.

Sincerely,

Jesse Helms

EDWARD ZORINKSY
Ranking Minority Memeber

JESSE HELMS
Chairman

Enclosures

SUMMARY OF PROVISIONS

Title I of the bill would require the Secretary of Agriculture to sell notes and other obligations held in the Rural Development Insurance Fund in such amounts as to realize net proceeds not less than $550,000,000 during fiscal year 1987, $549,000,000 during fiscal year 1988, and $543,000,000 during fiscal year 1989. Title I also makes clear that these sales would be made on a nonrecourse basis and that Farm Credit System institutions would be eligible to purchase and service such notes and other obligations, subject to such terms and conditions as may be agreed to by the Secretary of Agriculture and the purchasing institution and as are approved by the Farm Credit Administration.

BACKGROUND

The Farmers Home Administration makes insured loans from three revolving funds: the Agricultural Credit Insurance Fund (ACIF), the Rural Development Insurance Fund (RDIF), and the Rural Housing Insurance Fund (RHIF). The programs funded through the ACIF and the RDIF are under the jurisdiction of the Senate Committee on Agriculture, Nutrition, and Forestry.

The revolving funds are maintained by moneys coming from three sources: (1) collections on previous loans, which are then reloaned; (2) appropriations from Congress to make up losses incurred through interest rate subsidies and loan defaults; and (3) the "sale" of loans, including their interest earnings, to the Federal Financing Bank.

Two insured loan programs are operated from the Rural Development Insurance Fund: the water and waste disposal program and the community facilities program.

The Farmers Home Administration and its predecessor agencies have financed construction of approximately 13,195 water and waste disposal systems in rural areas and towns having populations of up to 20,000 people. Public bodies, corporations operated on a nonprofit basis, and Indian tribes that are unable to obtain credit from other sources at reasonable rates and terms are eligible to borrow funds at below market interest rates under these loan programs. The repayment of such loans can be scheduled over a period of up to 40 years or over the useful life of the facility, whichever is less. Loan applicants have the option of choosing the interest rate in effect at the time of approval of the loan or at the closing. Grants can be made to reduce the cost of water and sewer projects in low income areas.

The Rural Development Act of 1972 expanded the lending authority of the Farmers Home Administration to include loans to public bodies or nonprofit organizations for community facilities providing essential services to rural residents. Fire protection, community halls, hospitals, nursing homes, medical clinics, libraries, and schools are among the more than 30 types of community facilities eligible for financing.

The facilities financed with these loans may be located in the rural countryside or in towns with populations of up to 20,000 persons. Loan repayment can be scheduled over a period of up to 40 years. Additional interest charges may apply to loans made to finance projects located on prime or unique farmland.

Applications for loans to finance public safety, such as rescue or fire protection facilities and equipment, receive priority for funding. Joint funding of projects with other lending sources is encouraged in order to obtain maximum benefit from program resources.

The interest rates charged for both the water and waste and the community facility loans are set on a sliding scale, from a low of 5 percent up to a level equal to market rates for comparable municipal tax-exempt obligations, depending on the nonmetropolitan median household income of the community.

Three insured loan programs are operated from the Agricultural Credit Insurance Fund. These programs are the farm ownership loan program, the farm operating loan program, and the disaster emergency loan program.

Farm ownership loans are made to family-size farmers who lack other sources of credit. These loans are made for the purpose of buying, improving, or refinancing farm real estate. The limit on such loans is $200,000, and they can be repaid over a period of up to 40 years. The interest rate for loans made under the regular farm ownership program is a fixed rate and is set by the Secretary to reflect the cost of Government borrowing. Borrowers who are eligible for low income limited resource farm ownership loans pay a rate of interest equal to one-half the regular farm ownership loan rate. When financially able, borrowers must "graduate", or refinance with conventional lenders.

Farm operating loans are made for production financing to family farmers and ranchers unable to secure credit elsewhere. As is the case with the real estate loan program, the loan limit is $200,000, with a fixed interest rate set by the Secretary to reflect the cost of government borrowing. Limited resource borrowers of farm operating loans pay an interest rate that is 3 percent below the regular interest rate charged on farm operating loans. The term of the loans usually ranges from a period of 1 to 7 years, with a maximum repayment period of 15 years for consolidated or rescheduled loans. Operating loans are secured by chattel mortgages on crops, livestock, machinery, or other non-real estate resources.

Emergency disaster loans aid farmers in recovering from the effects of actual production or other physical losses that occur as a result of natural disasters. Eligibility for such loans results when a farm is located in a county, or in a county contiguous to a county, that the President declares has been substantially affected by an emergency or major disaster or that has been determined to be a natural disaster area by the Secretary of Agriculture. Farmers are ineligible for loans to cover crop losses if the losses could have been insured against under the Federal crop insurance program.

Farmers unable to obtain credit elsewhere may receive loans to cover 80 percent of their actual losses, up to $500,000. The interest rate on such loans is set by the Secretary, but cannot exceed 8 percent. The Secretary has discretion to set the length of the loan repayment period, but cannot provide for a period longer than that set for real estate or operating loans.

PURPOSE AND NEED

The bill requires the Secretary of Agriculture to sell notes and other obligations from the Rural Development Insurance Fund on a nonrecourse basis, in such quantities as are necessary to realize net proceeds of at least $555,000,000 in fiscal year 1987; $549,000,000 in fiscal year 1988; and $543,000,000 in fiscal year 1989. The Committee believes these sales are a proper method of achieving the necessary spending reductions mandated by its budget reconciliation instructions. Spending reductions will be achieved as the sale proceeds are returned to the Rural Development Insurance Fund, consequently reducing the need for the appropriation of these amounts to the fund.

The Committee believes the required savings can be achieved by mandating the sale of notes and other obligations held in the Rural Development Insurance Fund (RDIF). This revolving fund currently holds notes having a face value of approximately $8 billion, most of which have been generated through loans made under the water and waste disposal program. The RDIF portfolio is attractive and saleable, as is evidenced by inquiries made by several private lenders concerning possible purchase of portions of the portfolio.

The administrative and servicing burdens associated with these obligations will be transferred from the Farmers Home Administration to the private purchasers, reducing the burden on FmHA personnel and management resources, and permitting those resources to be transferred to serve FmHA's remaining borrowers.

Although the Secretary has authority under current law to make nonrecourse sales of notes from the revolving funds under the Committee's jurisdiction, the Committee believes that an explicit statement is necessary to remove any possible uncertainty in the minds of potential purchasers. Any such uncertainty could reduce the value of the notes and other obligations, making such sales difficult. Consequently, the bill explicitly provides that sales of notes and other obligations from the Rural Development Insurance Fund will be made on a nonrecourse basis.

Generally, purchasers of such notes and other obligations in the secondary market need the assurance that they can adequately service these obligations. Certain administrative policies and procedures that the Secretary has implemented under the Consolidated Farm and Rural Development Act, and which are not available to borrowers in the private sector, would greatly restrict prudent servicing of these loans by potential purchasers. Consequently, the Committee included the nonrecourse provision, which makes explicit that both the purchaser of the notes and the Secretary are relieved of responsibilities that might have been imposed, had the borrower remained indebted to the Secretary.

The contractual terms of the obligations, such as the interest rates and other specified terms, will not change as a result of the sale.

The Committee also notes that the purchasers of the notes receive no warranties or indemnities from the Secretary or any other agent of the Federal Government. Any credit enhancement measures undertaken, such as insurance or reserve funds, will be the sole responsibility of the purchaser.

The Committee realizes that the value of the notes will be enhanced insofar as the pool of potential buyers in increased. In order to obtain maximum value for the notes and other obligations sold from the fund, the Committee believes it is vital to have no restriction on the pool of eligible buyers.

In an effort to ensure the purchase eligibility of certain potential buyers, subsection (c) makes explicit that Farm Credit System institutions will be eligible to purchase and service notes and other obligations sold from the Rural Development Insurance Fund. To provide the flexibility necessary to facilitate the purchase of such notes, the subsection provides that the purchase, servicing, collection, and disposition of such notes by System institutions shall be governed by the terms and conditions agreed to by the Secretary of Agriculture and the purchasing institutions and as are approved by the Farm Credit Administration.

COMMITTEE CONSIDERATION

On Wednesday, July 16, 1986, the Committee met to consider action necessary to make spending reductions to meet the budget reconciliation instructions issued under the First Concurrent Resolution on the Budget for Fiscal Year 1987.

Chairman Helms explained that the Committee's reconciliation instructions were to achieve budget savings of $1.647 billion dollars over a 3-year period. He noted that although the Conference Committee on the budget resolution assumed that the budget savings would be made through the sale of loan assets, each Committee has sole discretion to determine how its budget savings will be made.

Chairman Helms then proposed that the budget savings be achieved by requiring the Secretary of Agriculture to make sales of loan assets on a nonrecourse basis out of the Rural Development Insurance Fund (RDIF) and the Agricultural Credit Insurance fund (ACIF) in such amounts as would be necessary to realize net proceeds of $555,000,000 in fiscal year 1987; $549,000,000 in fiscal year 1988; and $543,000,000 in fiscal year 1989.

Senator Andrews asked whether the makers of notes and other obligations sold to private investors would continue to receive the same protections regarding interest rates and payback provisions. Committee counsel explained that the contractual rights, which include interest rates and other contractual terms, would remain the same after purchase, but that the notes and other obligations would be sold without recourse to the Federal Government.

Senator Zorinsky then offered an amendment to the Helms proposal to strike references to the Agricultural Credit Insurance Fund, thus limiting the mandated sales to notes and other obligations held in the Rural Development Insurance Fund. He explained that borrowers from the Agricultural Credit Insurance Fund are often farmers in adverse financial circumstances and that it is important to protect their procedural rights. He stated that the Congressional Budget Office had assured him that the required savings could be achieved through sales of RDIF notes and obligations.

Senator Zorinsky's amendment also expressly stated that Farm Credit System institutions would be eligible to purchase notes and other obligations sold from the Rural Development Insurance Fund and to service these obligations. Senator Zorinsky stated that this provision was necessary to facilitate the sale of notes and other obligations from the RDIF, while not unduly expanding the authority of system institutions to make loans.

Chairman Helms then called on a representative of the Congressional Budget Office, who advised the Committee that CBO estimates indicated there were sufficient assets in the Rural Development Insurance Fund that could be sold to achieve the necessary budget savings.

The Committee understands that the assets in the water and waste program as of March 30, 1985, were $6.538 billion, and those in the community facilities program were $1.552 billion, for a total of $8.090 billion.

On a voice vote, the Committee then adopted the Helms proposal as amended by the Zorinsky amendment.

SECTION-BY-SECTION ANALYSIS

Section 101(a) provides that the Secretary of Agriculture must, under such terms as the Secretary may prescribe, sell notes and other obligations held in the Rural Development Insurance Fund established under section 309A of the Consolidated Farm and Rural Development Act (7 U.S.C. 1929a) in such amounts as to realize net proceeds of not less than--

(a) $555,000,000 from such sales during fiscal year 1987;

(b) $549,000,000 from such sales during fiscal year 1988; and

(c) $543,000,000 from such sales during fiscal year 1989.

Section 101(b) amends section 309A(e) of the Consolidated Farm and Rural Development Act to make explicit that the Secretary may sell notes and other obligations from the Rural Development Insurance Fund on a nonrecourse basis. The Secretary and any subsequent purchaser of such notes and other obligations sold by the Secretary on a nonrecourse basis will be relieved of any responsibilities that might have been imposed had the borrower remained indebted to the Secretary.

The Committee intends that there be no Federal governmental liability to either the makers or purchasers of notes held in the Rural Development Insurance Fund once any sale of such notes is complete. By the use of the term "nonrecourse", the Committee intends that there be no Federal guarantees of principal and interest payments, repurchase contracts, agreements to replace bad loans with good loans, warranties relating to collateral value, or any other agreements requiring continued Federal involvement or contingent liability. Any credit or note enhancement measures, such as reserve funds, over collateralization, or insurance, shall be the responsibility of the purchaser.

Section 101(c) provides that institutions of the Farm Credit System operating under the Farm Credit Act of 1971 (12 U.S.C. 2001) will be eligible to purchase notes and other obligations held in the Rural Development Insurance Fund and to service (including the extension of additional credit and all other actions necessary to preserve, conserve, or protect the institutions' interests in such notes and other obligations), collect, and dispose of such notes and other obligations, subject only to such terms and conditions as may be agreed to by the Secretary of Agriculture and such purchasing institutions and as are approved by the Farm Credit Administration.

The Committee recognizes that the servicing of notes and other obligations purchased by Farm Credit System institutions may entail the extension of additional credit to the makers of the notes or other obligations and that such extensions of credit may be made to borrowers not eligible, under current law, to borrow from system institutions.

CBO COST ESTIMATE

At the request of the Chairman of the Senate Committee on Agriculture, Nutrition, and Forestry, the Congressional Budget office prepared a cost estimate of the provisions in title I. The cost estimate follows:

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

Rudolph G. Penner
Director

July 21, 1986

Honorable Jesse A. Helms
Chairman
Committee on Agriculture, Nutrition and Forestry
United States Senate
328A Russell Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

The Congressional Budget Office has prepared the attached cost estimate for a bill to require the Secretary of Agriculture to sell Rural Development Insurance Fund loans in amounts sufficient to meet reconciliation savings assigned in the fiscal year 1987 budget resolution.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

Rudy Penner

Rudolph G. Penner

CONGRESSIONAL BUDGET OFFICE

COST ESTIMATE

July 21, 1986

1. BILL NUMBER: Not yet assigned.

2. BILL TITLE:

   A bill to require the Secretary of Agriculture to sell Rural Development Insurance Fund loans in amounts sufficient to meet reconciliation savings assigned in the fiscal year 1987 budget resolution.

3. BILL STATUS:

   As ordered reported by the Senate Committee on Agriculture, Nutrition, and Forestry, July 16, 1986.

4. BILL PURPOSE:

   This bill requires the Secretary of Agriculture to sell loans held by the Rural Development Insurance Fund (RDIF) in amounts sufficient to meet the Committee's reconciliation targets. The bill also clarifies the authority of Farm Credit System institutions to purchase RDIF loans.

5. ESTIMATED COST TO THE FEDERAL GOVERNMENT:

(by fiscal years, in millions of dollars)

	1987	1988	1989	1990	1991
Estimated Borrowing Authority	---	-118	-122	292	292
Estimated Outlays	-555	-549	-543	292	292

The costs of this bill fall within budget function 450.

Basis of Estimate:

- The bill sets certain targets for the net proceeds from the sale of RDIF loans. These proceeds offset borrowing authority, where it is estimated to be required, and outlays. CBO estimates that, in fiscal years 1987 through 1989, sales of loans with face value of about $1.0 billion, $1.2 billion, and $1.3 billion, respectively, will be required in order to meet the targets specified in the bill. These amounts were estimated using the market yields of Moody's Aaa securities of comparable maturity. The sale of loans results in the loss of future annual principal and interest payments estimated at $292 million for fiscal years 1990 and beyond, which increases estimated borrowing authority and outlays in those years by the same amount. CBO assumes that all loans will be sold without recourse to the federal government. Consequently, proceeds from the sale would be counted as offsetting receipts and would offset borrowing authority and outlays. Were the loans to be sold with recourse, CBO would count the proceeds as borrowing, which would not offset borrowing authority or outlays.

There is some speculation that the interest from these loans would be exempt from federal taxation. No bond counsel opinion exists stating that these loans would be tax-exempt, but should this be the case, then loans of lower face value would need to be sold each year to meet the targets. This would result in reduced federal tax revenues, but would also reduce the loss from forgone principal and interest payments.

6. ESTIMATED COST TO STATE AND LOCAL GOVERNMENTS: None.

7. ESTIMATE COMPARISON: None.

8. PREVIOUS CBO ESTIMATE: None.

9. ESTIMATE PREPARED BY: Paul DiNardo (226-2860)

10. ESTIMATE APPROVED BY:

for James L. Blum
Assistant Director
for Budget Analysis

REGULATORY IMPACT EVALUATION

In compliance with section 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact associated with the implementation of title I as reported.

Section 101 of title I directs the Secretary of Agriculture to sell notes and other obligations held in the Rural Development Insurance Fund established under section 309A of the Consolidated Farm and Rural Development Act to realize net proceeds of $555 million, $549 million, and $543 million, during fiscal years 1987, 1988, and 1989, respectively. Institutions of the Farm Credit System would be eligible to purchase the notes and other obligations held in the Rural Development Insurance Fund and subsequently service, collect, and dispose of the obligations.

This provision will have little regulatory impact on the individuals and communities that have issued the notes and obligations held in the Rural Development Insurance Fund. Under the terms of the provision, these notes and obligations will be sold to private purchasers without recourse. Neither the makers nor the subsequent purchasers will have any rights against the Secretary of Agriculture subsequent to the sale of the obligations. Other than a limitation on the ability of the private purchaser to force the maker of the obligation to obtain financing elsewhere and pay off the obligation, all rights between the maker and the purchaser are contractual in nature and are fixed by the language of the respective note.

This title will have little effect on the personal privacy of borrowers and purchasers and on the amount of governmental paperwork performed by the members of these groups. The servicing practices of the purchasers may differ from those of the Farmers Home Administration, but should not materially affect the borrowers. To the extent that the obligations are no longer serviced by the Farmers Home Administration, agency personnel will be available to handle the servicing of FmHA farm real estate and operating loans.

CHANGES IN EXISTING LAW

Changes in existing law made by title I are shown as follows (existing law proposed to be deleted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT

* * * * * * *

SUBTITLE A.—REAL ESTATE LOANS

* * * * * * *

SEC. 309A. * * *

* * * * * * *

(e) Notes and security acquired by the Secretary in connection with rural development loans made, guaranteed, or insured under this title or transferred by subsection (b) of this section shall become a part of the Insurance Fund. Notes *and other obligations* may be held in the Insurance Fund and collected in accordance with their terms or may be sold by the Secretary with or without agreements for insurance thereof at the balance due thereon, or on such other basis as the Secretary may determine from time to time**[**.**]**, *including sale on a nonrecourse basis. The Secretary and any subsequent purchaser of such notes and other obligations sold by the Secretary on a nonrecourse basis shall be relieved of any responsibilities that might have been imposed, had the borrower remained indebted to the Secretary.* All net proceeds from such collections, including sales of notes or property, shall be deposited in and become a part of the Insurance Fund.

* * * * * * *

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Title II

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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510

July 29, 1986

The Honorable Pete V. Domenici
Chairmrn
Committee on the Budget
United States Senate
Washington, D.C. 20510

The Honorable Lawton Chiles
Ranking Minority Member
Committee on the Budget
United States Senate
Washington, D.C. 20510

Dear Senators Domenici and Chiles:

As requested, attached herewith is legislative and report language comprising the Senate Banking, Housing and Urban Affairs Committee's response to the reconciliation requirements of the Budget Resolution for Fiscal year 1987, as adopted during our markup today.

Sincerely,

Bill Proxmire

William Proxmire
Ranking Minority Member
Committee on Banking,
Housing and Urban Affairs
United States Senate

Jake Garn

Jake Garn
Chairman
Committee on Banking,
Housing and Urban Affairs
United States Senate

Report Language to Accompany the Reconciliation Recommendations of the Senate Committee on Banking, Housing and Urban Affairs for Fiscal years 1987, 1988, and 1989

The Committee on Banking, Housing and Urban Affairs met on July 29, 1986 to consider legislation to make savings in accordance with the reconciliation instructions of subsections (a) and (m) of Section 2 of the concurrent resolution on the budget for fiscal year 1987. Without objection, the Committee ordered the following recommendations to be made to the Committee on the Budget for inclusion in reconciliation legislation to be reported to the Senate.

First, the Committee has acted to require the sale of rural housing loans to the public in an amount that shall be sufficient to provide $1,158,000,000 in net receipts to offset federal outlays in fiscal year 1987, $500,000,000 in fiscal year 1988, and $500,000,000 in fiscal year 1989. The Committee would like to make clear that the sale of these loans will reduce the assets of the United States by the amount of the principal and the income from the interest that would otherwise accrue to the federal government. While the amount of loans necessary to sell in order to achieve the stated outlay reduction will be only a small portion of the entire rural housing portfolio, it is assumed that this portion contains the better loans in the entire portfolio. Therefore, it is with reluctance that this action is taken and only because the alternative of reducing assisted housing program levels for very low- and low-income families in dire need of housing assistance is considered as the only other alternative under the debt reduction imperatives with which the Committee is faced. Accordingly, the Secretary of Agriculture is directed to sell from the Farmers Home Administration portfolio of housing loans those loans that would be expected to be most easily sold to the public with the least cost to the government. The Committee is aware that such loans are more likely to be non-interest subsidy loans with relatively high note rates and substantial remaining terms. The Committee is also aware that the Secretary shall have to redeem the Certificates of Beneficial Ownership held by the Federal Financing Bank (FFB) in order to free these loans so that he may sell them to the public. Such redemptions will involve an interest penalty cost to hold the FFB harmless. The authority to redeem these loans is already within the power of the Secretary of Agriculture and the Committee expects that the FFB will expeditiously and fully cooperate with the Secretary in such actions necessary to achieve the purposes of this section.

The Committee is also concerned that the Secretary of Agriculture, to the maximum extent practicable, give consideration to the protection due the borrowers when setting forth the guidelines that govern the sale of these loans. While it may not be possible to extend every protection afforded borrowers when the loan was made by the Secretary, all such protection that may be extended without adversely affecting the expeditious sale of these loans to the public should be provided. In addition, the Committee has included certain reporting requirements among the provisions to assure that the fiscal year 1987 outlay reduction intended by this action is actually achieved. The Secretary is required to report to the House Banking, Finance and Urban Affairs and the Senate Banking, Housing and Urban Affairs Committees 90 days following enactment of this section and each subsequent 90-day period throughout fiscal year 1987 on the progress made in actually realizing the required proceeds from the sale of rural housing loans so that the Congress may be alerted in a timely manner to any problems that prevent its intended outlay requirements for the Comptroller General to audit and evaluate the progress and results of the Secretary of Agriculture in the subject loan sale activities in order to further assist the Committees in achieving the objectives intended in this section.

Second, the Committee has acted to require the sale of Export-Import Bank (Exim) loans to the public in an amount that shall be sufficient to provide $500,000,000 in net receipts to offset federal outlays in fiscal year 1987. While it is likely that only 5 percent of Exim's total portfolio will have to be sold, it is assumed that this portion will contain the highest quality loans in the portfolio in order to ensure the highest return to the federal government. These would include loans such as those to the developed economies of Europe, Japan and Canada, bearing average coupon rates of roughly 8.75 percent.

Despite the relative attractiveness of these loans compared to Exim's overall portfolio, there is no existing secondary market for these loans and it is likely that they will sell in the market at a substantial discount. Without remedial action, this discount will be borne by Exim reserves and capital. In addition, since Exim would return the proceeds of sale to the treasury through its transactions with the FFB, Exim prepayment of the liabilities underlying the assets sold would result in a "prepayment penalty" charged by FFB (based on the current value of scheduled repayments in light of present interest rates) that would also hit Bank capital.

The Committee recognizes that the combination of the loss of the Bank's highest quality assets and the large hit to Bank capital would impair the standing of the Bank in capital markets. The effectiveness and the value of Exim's guarantees would be adversely affected, complicating its mission of supporting U.S. exports. In order to avoid such damage, the Committee therefore authorizes the Bank to issue new capital stock in an amount equal to any reduction in capital and reserves arising from the asset sale and related transactions described above. The Committee further authorizes and directs the Secretary of the Treasury to purchase such stock on behalf of the U.S. Government.

This provision will ensure that the Export-Import Bank does not suffer a loss of capital and impairment of its ability to support U.S. exports as a result of extraordinary measures to provide resources to the General Fund to reduce the budget deficit. The total capital position of the Bank will be unchanged, but Treasury holdings of capital stock will be increased by an amount equal to the loss of reserves from the above described transactions.

CBO COST ESTIMATE

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

Rudolph G. Penner
Director

July 31, 1986

Honorable Jake Garn
Chairman
Committee on Banking, Housing and
Urban Affairs
United States Senate
534 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

The Congressional Budget Office has prepared the attached table analyzing the budget impact of the reconciliation recommendations of the Senate Committee on Banking, Housing and Urban Affairs, as ordered reported on July 29, 1986.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

Rudy Penner

Rudolph G. Penner

cc: Honorable William Proxmire
Ranking Minority Member

RECONCILIATION RECOMMENDATIONS FOR FISCAL YEAR 1987 -- SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

FEDERAL BUDGET IMPACT RELATIVE TO CURRENT LAW AND THE BUDGET RESOLUTION BASELINE (by fiscal year, in million of dollars)

	1987	1988	1989	1990	1991
DIRECT SPENDING:					
Sale of Rural Housing Loans a/					
Function 370					
Estimated Budget Authority	642	---	236	-88	-114
Estimated Outlays	-1,158	-500	-500	-88	-101
Function 900 (Interest)					
Estimated Budget Authority	-247	120	205	422	435
Estimated Outlays	-247	120	205	422	435
Sale of Eximbank Loans b/					
Function 150					
Estimated Budget Authority c/	120	-470	---	---	---
Estimated Outlays	-500	119	110	93	65
Function 900 (Interest)					
Estimated Budget Authority	---	39	39	39	39
Estimated Outlays	---	39	39	39	39
TOTAL - DIRECT SPENDING					
Estimated Budget Authority	515	-311	480	373	360
Estimated Outlays	-1,905	-222	-146	466	438

a. The reconciliation recommendations would require the Farmers Home Administration (FmHA) to sell loan assets in amounts sufficient to lower net outlays (increase receipts) by $1,158 million in fiscal year 1987, $500 million in 1988, and $500 million in 1989. The terms and conditions of the sales would be determined by the Secretary of Agriculture. The amount of loans that would ultimately be sold would depend upon the loans chosen for sale and the market response. For this estimate, it was assumed that high quality loans bearing interest rates comparable to the current market would be chosen. It was further assumed that the sales would be made without recourse to the federal government. Under the assumptions used, an estimated $3,329 million of loans would have to be sold over the three-year period.

b. The Committee's recommendations would require the Export-Import Bank to sell sufficient loan assets to reduce outlays by $500 million in 1987. The terms and conditions of the sales would be determined by the Board of Directors of the bank. The loans are assumed to be sold without recourse to the federal government. An estimated $643 million of loans would be sold in order to meet the savings specified in the legislation.

c. Section 2002(c) provides a permanent, indefinite appropriation for the Secretary of the Treasury to purchase capital stock in the Eximbank equal to the losses realized from the sale of its loan assets. The estimate assumes $65 million in losses from sale of assets and $55 million in prepayment penalties on the Eximbank's liabilities to the Federal Financing Bank.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Title III

JOHN C. DANFORTH, MISSOURI, CHAIRMAN

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RALPH B. EVERETT, MINORITY CHIEF COUNSEL, AND STAFF DIRECTOR

United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510

July 25, 1986

The Honorable Pete Domenici
Committee on the Budget
United States Senate
Washington, D.C. 20510

Dear Senator Domenici:

We are submitting herewith the legislative changes in programs within the jurisdiction of the Committee on Commerce, Science, and Transportation to achieve savings of $150 million in budget authority and outlays for the three year period of FY 1978-1989 as required under the reconciliation instructions contained in S. Con. Res. 120, the First Budget Resolution for 1987.

We are recommending legislative changes in programs within the Committee's jurisdiction which will achieve a savings of $192 million in budget authority and $192 million in outlays during fiscal years 1987-1989.

If you should have any questions, please feel free to contact us.

Sincerely,

Fritz Hollings
Ernest F. Hollings
Ranking Minority Member
Committee on Commerce, Science, and Transportation

Jack Danforth
John C. Danforth
Chairman
Committee on Commerce, Science, and Transportation

TITLE III

SECTION 301 -- COAST GUARD USER FEES

This section directs the Secretary of the department in which the Coast Guard is operating to collect receipts from payments by users of Coast Guard services during fiscal years 1987 through 1989.

The Secretary is directed to establish and implement a system for collection of payments based upon sale of Support of Services (SOS) Stamps for specified services and fees to be charged to persons who utilize those services and have not purchased a SOS Stamp.

It is intended that SOS Stamps be sold at modest prices and be designed to serve as both a voluntary means of contributing to the Coast Guard and as a type of insurance, entitling the purchaser to specified services without charge. Those uninsured persons who have not purchased a SOS Stamp would pay fees for the services whenever they utilize them and would, therefore, pay a greater price for the same services.

The Secretary is given discretion to develop several different SOS Stamps, each providing coverage for different classes of services. Stamps and fees for non-emergency as well as other Coast Guard services should be considered and designed to minimize adverse economic effects upon the users as well as upon dependent and related commercial activities. It would not, for example, be appropriate to impose fees upon the barge industry at this time, since such fees would exacerbate its already severe economic depression.

The Secretary is directed to develop, by January 1, 1987, a schedule of fees to be charged to persons who utilize services and have not purchased a SOS Stamp for those same services. The Secretary is not authorized to issue regulations or collect fees under this section for any services for which there is not a corresponding and less expensive SOS Stamp available for sale. The fees are to be established by regulation under the General User Fee Statute (31 U.S.C. 9701). Such fees must, therefore, be set at a level no higher than the actual cost of the service and value to the individual to be charged a fee, and they must satisfy the other requirements of that Statute.

The Secretary is directed to report to Congress by December 1, 1986, prior to implementing the system and again after one year of experience with the system. The Committee intends to monitor the Secretary's efforts closely and to scrutinize the implementation of the system and its effects carefully.

SECTION 302 -- TITLE XI LOAN GUARANTEES

This section provides the Secretaries of Commerce and Transportation with authority to foreclose on vessels secured by title XI of the Merchant Marine Act, 1936 loan guarantees that are held by defaulting debtors in chapter 11 reorganization bankruptcy proceedings. It provides exemptions from the automatic stay provision of the Bankruptcy Code (11 U.S.C. 362), which would otherwise apply to such vessels and impede foreclosure by the Secretaries.

Background

Prior to the Bankruptcy Reform Act of 1978, the Federal Government was not subject to an automatic stay and could foreclose on a vessel in which it had a secured interest at any time during a bankruptcy proceeding. The Bankruptcy Reform Act modified prior law by providing the Federal Government with only a limited exemption from the stay for secured interests in vessels which were certificated by the Interstate Commerce Commission (ICC) (11 U.S.C. 1110). The government was not granted an exemption for other vessels subject to title XI loan guarantees.

The title XI loan guarantee program (46 App. U.S.C. 1271 et seq.) is currently experiencing financial difficulties. There are very few vessels financed under title XI that are certificated by the ICC. The Federal Government has guarantees in excess of $6 billion, of which approximately $1.25 billion are in default. Approximately $715 million of the defaulted loans are in bankruptcy proceedings, and a substantial number of additional bankruptcies are anticipated. The Secretaries of Commerce and Transportation maintain that it is in the public interest to provide the Federal Government with the authority to foreclose on vessels secured by title XI loan guarantees involved in bankruptcy proceedings, rather than forcing the government to await the conclusion of those proceedings.

Legislative History

S. 1992 and S. 1993 were introduced by Senator Stevens on behalf of the administration on December 19, 1985. The Subcommittee on Merchant Marine conducted a hearing on March 21, 1986, to review the administration's proposals. At that time, alternative language was offered to narrow the scope of the legislation, and this was introduced by Senator Stevens upon request as S. 2436.

Summary of Major Provisions

Section 302 contains four key features:

Preferred Creditor Status

The original administration proposals, S. 1992 and S. 1993, provided an exemption from the automatic stay for all creditors who had secured interests in vessels subject to bankruptcy proceedings. This section limits the preferred creditor class to the Secretaries of Commerce and Transportation for vessels guaranteed under the title XI program. This feature eliminates the potential for creditors other than the Secretaries to impede a bankruptcy proceeding when the Secretary may have determined that it is in the public interest to permit a reorganization under chapter 11 to occur.

Retroactive Application

It was unclear from the language of S. 1992 and S. 1993 whether the exemption from the automatic stay provision would apply to the bankruptcy proceedings initiated prior to the date of enactment of that legislation. The Committee determined that retroactive application of the exemption would be fundamentally unfair to debtors already in bankruptcy due to the difficult business decisions that would have been made in reliance upon the protection of the existing Bankruptcy Code from foreclosure on assets. This section makes the authority to foreclose applicable only to those bankruptcy proceedings initiated after August 1, 1986.

Limited Duration

The authority to foreclose expires on December 31, 1989. This exemption of limited duration will provide Congress an opportunity to review the exercise of discretion by the Secretaries in implementing the bill's foreclosure authority over the three-year period and its effects on the bankruptcy proceedings and maritime interests.

Chapter 13 Proceedings

S. 1993 and S. 2436 would have provided the Secretaries with an exemption from the automatic stay provision in chapter 13 bankruptcy proceedings involving the adjustment of debts of individuals as well as in chapter 11 proceedings involving corporate reorganization. Information provided by the Department of Commerce indicates that the level of defaults and related borrowing from the Treasury associated with individuals is minuscule compared to corporate defaults. For these reasons, this section does not provide authority to foreclose on title XI guaranteed vessels involved in chapter 13 proceedings.

Section-by-Section Analysis

Section 302(a) adds two exemptions to the eleven exemptions from the automatic stay on foreclosure proceedings set forth in section 362(b) of title 11, United States Code. New exemption (12) provides the Secretary of Transportation with foreclosure authority and new exemption (13) provides the same authority to the Secretary of Commerce. These exemptions are available only with respect to debtors in chapter 11 reorganization proceedings.

The respective Secretaries are required to file a petition with the bankruptcy court for relief from the automatic stay and a 90-day grace period is provided before the stay is lifted. The exemption from the automatic stay provision is applicable to the commencement, continuation, and conclusion to the entry of final judgment of the foreclosure action. It is intended that all stages of the litigation be exempt from the operation of the stay, including those stages which extend beyond December 31, 1989, provided the action is commenced before that date. This section is also intended to permit district courts sitting in admiralty to distribute the proceeds from any liquidation once the stay has been lifted.

Reference is made to section 207 of the Merchant Marine Act, 1936 because it provides the Secretary with the general authority to enter into contracts including, but not limited to, title XI loan guarantees. The reference to "applicable State law" applies to those situations in which the Secretary holds a security interest in a vessel under construction. This security interest is evidenced by a Uniform Commercial Code filing, accomplished pursuant to State law.

Section 302(b) provides that the exemptions from the automatic stay apply in only those chapter 11 proceedings initiated by petitions filed under section 362 of title 11, United States Code, after August 1, 1986.

CBO COST ESTIMATE

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

Rudolph G. Penner
Director

July 29, 1986

Honorable John C. Danforth
Chairman
Committee on Commerce, Science and
Transportation
United States Senate
508 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

The Congressional Budget Office has prepared the attached table analyzing Title III of the Omnibus Reconciliation Act of 1986, as ordered reported by the Senate Committee on Commerce, Science and Transportation, July 23, 1986.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

Rudy Penner

Rudolph G. Penner

cc: Honorable Ernest F. Hollings
Ranking Minority Member

FEDERAL BUDGET IMPACT RELATIVE TO CURRENT LAW AND THE BUDGET RESOLUTION BASELINE ADJUSTED FOR ENACTED LEGISLATION (by fiscal year, in millions of dollars)

	1987	1988	1989	1990	1991
DIRECT SPENDING					
Section 301 - Coast Guard User Fees					
Estimated Budget Authority	-38	-50	-50	---	---
Estimated Outlays	-38	-50	-50	---	---
Section 302 - Title 11 Loan Guarantees a/					
Estimated Budget Authority	-12	-36	-6	27	16
Estimated Outlays	-12	-36	-6	27	16
TOTAL: DIRECT SPENDING					
Estimated Budget Authority	-50	-86	-56	27	16
Estimated Outlays	-50	-86	-56	27	16

a. Section 302 would enable the Maritime Administration to take possession (and title) to a vessel that has defaulted on its loans to the agency and declares bankruptcy after August 1, 1986. The primary impact of this title is essentially one of timing: under current law, MARAD is able to recover its losses on court-protected vessels only after lengthy bankruptcy proceedings that can delay the transfer of title by several years. The CBO estimate assumes that the effect of this section would be to speed up recoveries on assets of bankrupt defaulters by about two years. In the first three years, this would result in savings, but in later years this provision would result in outlay increases, because defaults and (correspondingly) recoveries fall in later years, and recoveries that are moved forward become smaller. The net impact of Section 302 over five years is a savings of $11 million.

Any estimate of savings from enactment of this section depends on assumptions regarding market conditions, MARAD policies, and other very uncertain factors. The results of this analysis depends heavily on the assumption that ships obtained by MARAD under this bill will be sold in a timely fashion. If the agency does not sell its assets for any reason (including further deterioration of market conditions or industrial policy considerations), the bill could result in costs rather than savings. This would occur because the government, by taking control of the asset, would forgo bankruptcy protection payments to which it would otherwise be entitled and, in addition, would incur maintenance and other custodial costs from a much earlier date than under current law.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Title IV

JAMES A. McCLURE, IDAHO, CHAIRMAN

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United States Senate
COMMITTEE ON
ENERGY AND NATURAL RESOURCES
WASHINGTON, DC 20510

July 29, 1986

The Honorable Pete V. Domenici
Chairman
Committee on the Budget
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In accordance with the reconciliation instruction contained in the Concurrent Resolution on the Budget, Fiscal Year 1987 (S. Con. Res. 120, H. Rept. 99-664), enclosed are the legislation and report language of the Committee on Energy and Natural Resources. The recommendations of the Committee include changes in existing laws within its jurisdiction to reflect the assumptions in the Committee's reconciliation instruction. The recommendations of the Committee achieve changes in spending authority for fiscal year 1987, and for the aggregate three-year period of fiscal years 1987 through 1989.

On behalf of the Committee, we look forward to working with your Committee to achieve early Senate approval of the Omnibus Budget Reconciliation Act of 1987.

Sincerely,

J. Bennett Johnston
Ranking Minority Member

James A. McClure
Chairman

JAM:rgbb

Enclosure

COMMITTEE ON ENERGY AND NATURAL RESOURCES

RECONCILIATION RECOMMENDATIONS PURSUANT TO S. CON. RES. 120

July 29, 1986

Mr. McClure, reported by the Committee
on July 29, 1986, and
transmitted to the Senate Budget Committee pursuant to
S. Con. Res. 120

SHORT EXPLANATION

In accordance with the reconciliation instruction contained in the Concurrent Resolution on the Budget -- Fiscal Year 1987 (S. Con. Res. 120, H.Rept. 99-664), the Committee on Energy and Natural Resources recommends, as discussed herein, changes in laws within its jurisdiction which provide spending authority so as to achieve the savings in budget authority and outlays for fiscal year 1987, and for the aggregate 3-year period of fiscal years 1987 through 1989 (See table 4.1).

In summary, the recommendations of the Committee result in estimated savings in budget authority and outlays compared to the Senate Budget Resolution assumptions, as follows:

-- For fiscal year 1987, the Committee estimates that its recommendations would achieve savings in spending of $132 million in budget authority and $132 million in outlays compared to the SBC Baseline (See table 4.1);

-- For the three-year period fiscal years 1986 through 1989, the Committee estimates that its recommendations would achieve aggregate savings in spending of $246 million in budget authority and $246 million in outlays (See table 4.1);

Consistent with the assumptions in the reconciliation instruction to the Committee, the recommendations of the Committee include: (1) the recoupment of additional petroleum overcharge funds over the next three years; and (2) recovery by the Federal Energy Regulatory Commission of its direct and indirect costs through the use of fees and annual charges assessed against all companies that are subject to FERC's jurisdiction.

In addition, the recommendations of the Committee achieve savings in spending in four areas not assumed in its reconciliation instruction: (1) Federal Energy management; (2) DOE Manufacturers Energy Consumption Survey; (3) DOE Study of Crude Oil Production and Refining Capacity in the United States; and (4) DOI Great Swamp National Wildlife Refuge.

Following Congressional approval of the Budget Resolution, the United States District Court for Kansas approved, on July 7, 1986, the settlement in the Department of Energy Stripper Well Exemption Litigation (MDL No. 378). As di~~scussed~~ below, the settlement accomplished three things: First, it provides for the distribution of the overcharge funds currently held in escrow in the Stripper Well case. Second, it addresses the distribution of future overcharge funds collected in other crude oil overcharge cases. Third, it resolves litigation arising from the failure of the Department to issue final buy and sell lists for the crude oil entitlements program for the months immediately prior to decontrol in January 1981.

In summary, the Committee bill as amended preserves fully the agreement and judgment while at the same time recouping for the Federal Treasury all crude oil overcharge funds not subject to the agreement and judgment. The legislation does not expand or reduce in any way the scope of the funds covered by the Stripper Well settlement agreement or the court's judgment, including the escrowed and deficiency funds in MDL 378, the funds currently in DOE or other escrow accounts, and any other funds in which rights were created or vested by the agreement or judgment. (See Committee Action for further discussion.)

Table 4.1

COMMITTEE ACTION

PROGRAM		Spending Savings (In Millions of Dollars)			
		FY87	FY88	FY89	Total
Reconciliation Instruction	BA	-1,025	-400	-400	-1,825
	O	-1,217	-421	-412	-2,050
DEPARTMENT OF ENERGY					
Petroleum overcharge funds	BA	-100	0	0	-100
	O	-100	0	0	-100
State Energy Conservation programs	BA	0	0	0	0
	O	0	0	0	0
Federal energy management programs	BA	-0.1	-0.1	-0.1	-0.3
	O	-0.1	-0.1	-0.1	-0.3
Manufacturers energy consumption survey	BA	-0.3	-0.3	-0.3	-1
	O	-0.3	-0.3	-0.3	-1
Study of domestic production and refining	BA	-0.3	-0.3	-0.3	-1
	O	-0.3	-0.3	-0.3	-1
FEDERAL ENERGY REGULATORY COMMISSION					
Fees and annual charges	BA	-31	-56	-56	-143
	O	-31	-56	-56	-143
Total	BA	-132	-57	-57	-246
	O	-132	-57	-57	-246

SUMMARY OF MAJOR PROVISIONS

The recommendations of the Committee on Energy and Natural Resources encompass programs and activities of the following Departments and agencies within the jurisdiction of the Committee:

-- Department of Energy; and

-- Federal Energy Regulatory Commission.

Consistent with the assumptions in the reconciliation instruction to the Committee, as discussed below, its recommendations include: (1) the recoupment of additional petroleum overcharge funds over the next three years; and (2) recovery by the Federal Energy Regulatory Commission of its direct and indirect costs through the use of fees and annual charges assessed against all companies that are subject to its jurisdiction.

In addition, the recommendations of the Committee achieve savings in spending in four areas not assumed in its reconciliation instruction: (1) Federal Energy management; (2) DOE Manufacturers Energy Consumption Survey; (2) DOE Study of Crude Oil Production and Refining Capacity in the United States; and (4) DOI Great Swamp National Wildlife Refuge.

These recommendations encompass only two of the broad functional areas utilized by the Congressional budget process, namely: function 270: Energy; and function 950: Undistributed Offsetting Receipts.

DEPARTMENT OF ENERGY.

Petroleum Overcharge Funds.

Background: From August 18, 1973, until January 27, 1981, there was in effect mandatory petroleum price and allocation controls under the Emergency Petroleum Allocation Act of 1973. During that period overcharges occurred under various types of often complex situations.

Subsequently, on the basis of audits performed by the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), violators of the regulations have been identified and enforcement actions have been brought against the violators. Many of these overcharge cases have either been successfully adjudicated administratively by the DOE's Office of Hearings and Appeals, or appealed, litigated and brought to judgement in the courts, or have been settled by the Department and affected parties. Nevertheless many cases are still pending and more may be initiated in the future.

This has been an enormous and costly effort over more than a decade.

Often these cases were resolved through consent orders with the companies. The consent order might provide for various types of remedies, including direct cash refund to customers. If it was difficult to identify injured parties, the consent order might specify the amount to be paid into an escrow account, until a just and equitable method could be determined for distribution of the funds to overcharged parties. Those determinations frequently have been very difficult because of an inability to determine to what extent firms in the distribution chain actually may have absorbed, rather than passed on, any overcharges. Consequently, because few customers have the records necessary to document overcharges, approximately 90 percent of the recovered overcharge funds are typically unclaimed.

In such circumstances, where the economically injured parties could not be identified or distribution to injured parties was not practical, several attempts were made to fashion methods of indirect restitution to distribute these unclaimed monies. Until enactment in 1982 of the Warner Amendment (Sec. 155 of P.L. 97-337), which provided for the one time distribution of $200 million to the States for certain energy programs, there was no Congressional guidance as to what remedies might be preferred as a matter of public policy. Consequently, disputes arose over the appropriate method for disbursing indirect restitution which resulted in protracted and costly litigation.

Over the years the Department had employed a variety of forms of indirect restitution as a means of affording general compensation to persons thought to have been adversely affected by alleged overcharges. These remedies included company administered claims funds, price rollbacks, payments in the form of crude oil provided to the Strategic Petroleum Reserve, price reductions on fuel sold to utilities and transportation entities, payments to low-income heating oil consumers through charities, payments to State governments for general energy purposes, and payments directly to the U.S. Treasury.

However, following enactment of the Warner Amendment, the courts began to fashion their own remedies. For example, in 1983 the U.S. District Court for the District of Columbia in the Exxon case adopted the approach in the

Warner Amendment and ordered that the overcharge funds amounting to nearly $2.1 billion (including interest) be made available directly to the States for distribution to consumers under the five specific Federal energy programs specified in the Warner Amendment. The judge chose the approach in the Warner Amendment as a Congressionally sanctioned method. The Exxon judgment, when it became final in January 1986 following appeal which was denied, resulted in distribution to the States of approximately $2 billion.

Following this precedent, on July 7, 1986, the United States District Court for Kansas approved the settlement in the Department of Energy Stripper Well Exemption Litigation (MDL No. 378). According to the Department of Energy, under this Stripper Well settlement the Department anticipates the ultimate recovery and dispositon of approximately $4.5 billion in its remaining crude oil cases.

The settlement accomplished three things: First, the Stripper Well agreement provides for the distribution of the escrow funds already collected and those yet to be collected in the Stripper Well Exemption case itself. $525 million of this money is to be distributed to refiners, resellers, retailers, agricultural cooperatives, airlines, surface, rail and water transporters and utilities, in settlement of their claims to the overcharge funds. In return, all parties waive all future claims to crude oil refunds of any kind for this period. After this disbursement and the payment of all individual claimants who can document specific crude oil overcharges, the remaining money currently in escrow and due to be deposited in escrow - about $1.3 billion - will be split equally between the States and the Federal government.

Money will be distributed among the States according to the Warner Amendment formula, but under the Stripper Well order the States are permitted to spend this money on a broader range of programs than the five programs specified in the Warner Amendment. Money designated for the Federal government will be deposited in the Treasury as miscellaneous receipts.

Second, the Stripper Well settlement specifies that money currently in escrow in other crude oil cases - about $640 million - and to be recovered in all other future crude oil cases - estimated roughly at about $2 billion - will, after payment of direct restitution, also be split equally between the States and the Federal government. The States will have the same latitude in the use of this future money as is the case with the Stripper Well overcharges.

Finally, it resolves ongoing litigation arising from the failure of the Department to issue final buy and sell lists for the crude oil entitlements program. These lists were to have been published subsequent to President Reagan's January 1981 order removing the last vestiges of controls from petroleum. The purpose of the lists was to provide for the exchange of cash to approximately equalize crude oil costs among refiners for January 1981 and to "clean up" discrepancies, errors, ommissions and data deficiencies that had accumulated over the life of the program.

Because the crude oil entitilements program evolved over the period of controls into a very complex web of transactions involving refiners, importers, producers and other firms in the petroleum industry, specification of the final clean up list would be very complex and controversial. At issue in the final lists was an estimated $420 million that would be paid by entitlements buyers to entitlements sellers. Extensive litigation of the outcome was assumed.

The Stripper Well order settles this issue by providing for the redistribution among refiners, in light of their entitlements claims, of the $298 million which they will receive pursuant to the settlement. In return, all claims and litigation relating to the final entitlements notices will be dismissed.

Recommendation: The recommendations of the Committee would (a) in the case of any crude oil overcharge settlement, order, or judgment entered into prior to the date of enactment, credit to the general fund of the Treasury any funds to which the Federal government is expressly entitled; (b) otherwise exempt such prior settlements and judgments, including the Stripper Well settlement and judgment, from the coverage of this legislation to the extent that any persons or classes of persons have an enforceable right, created or vested as of the date of enactment of this Act, pursuant to such a settlement, order, or judgment; and (c) in the event that there are other crude oil overcharge funds, credit to the general fund the full amount which remains after restitution to persons who have sustained economic injury.

The recommendation of the Committee also establishes a statute of limitations for the commencement of enforcement actions under the Emergency Petroleum Allocation Act of 1973. The recommendation provides that such enforcement actions would be barred unless commencement of such action is filed before the later of January 1, 1987 or six years after the date of the violation upon which the action is based.

The recommendation also earmarks up to $256 million of the Federal share of petroleum overcharge funds to be available for each of fiscal years 1987, 1988 and 1989 to supplement appropriations for the four DOE State Energy Conservation programs.

Federal energy management.

Background: Currently the Federal Energy Management Program is required to use "marginal fuel costs" in calculating the energy cost savings of conservation investments in Federal buildings. Such cost estimates are difficult and expensive to calculate, but more importantly, they overstate the cost of electricity by factoring in the high cost of adding new capacity. This results in an overemphasis on efforts to save electricity rather than other fuels such as oil and gas.

Recommendation: The recommendation of the Committee would modify this requirement to permit the use of "average market" energy costs in these calculations. This change would make such calculations simpler, more accurate, and less costly to make. This change also would result in more cost effective investments in Federal building conservation projects.

The estimated savings from this change for fiscal year 1987 are $100 to $150 thousand; fiscal year 1988, $75 to $125 thousand; and fiscal year 1989, $75 to $125 thousand. The estimated three year savings are $250 to $400 thousand.

Manufacturers energy consumption survey.

Background: The Energy Efficiency Improvement Program of the Department of Energy's Office of Conservation and Renewable Energy is currently required to collect industrial energy consumption data under the Energy Policy and Conservation Act (EPCA). However, this data is of questionable statistical value because of gaps in certain industries and because it is collected in a way that does not permit the extraction of data by geographical area or in certain other important subsets.

Recently the Office of Management and Budget (OMB) approved, and the DOE initiated, a new Manufacturing Energy Consumption Survey (MECS) that will collect more useful data, more efficiently through the Bureau of Census. For example, the new MECS survey will be conducted every three years rather than annually. DOE has stated that the data generated by this new survey will be more useful that the data currently required to be collected by the Office of Conservation and Renewable Energy.

Instead of maintaining two surveys, DOE and OMB are seeking to phase out the old survey (CE-189) and replace it with the new MECS survey. This new survey is already provided for in the Energy Information Administration's base program costs.

Recommendation: The recommendation of the committee would authorize the Energy Information Administration to conduct the new Manufacturers Energy Consumption Survey. In addition, it would repeal the existing survey.

The estimated annual savings are $300 thousand, or $900 thousand over three years.

Study of crude oil production and refining capacity in the United States.

Recommendation: The recommendation of the committee would provide for the Secretary of Energy, acting through the Energy Information Administration (EIA) to conduct a study of domestic crude oil production and petroleum refining capacity and the effect of imports thereon. Within 60 days of enactment, the Secretary is directed to transmit to the President and the Congress such study including his findings and conclusions. The President, within 45 days thereafter, is directed to advise the Congress on his views on those levels at which imports of crude oil and refined petroleum products become a threat to national security. In addition, the President is to advise the Congress on those legislative or administrative actions, or both, required to prevent imports of crude oil and refined petroleum products form exceeding those import levels which threaten our national security.

In conducting this study it is expected that the EIA will consider all relevant factors as they relate to the domestic petroleum industry and its ability to produce crude oil and refined petroleum products, including such appropriate factors as domestic production needed for national defense and the impact of foreign competition on the economic welfare of domestic industries. The EIA shall provide notice and a reasonable opportunity for public comment on the matters within the scope of the study directed by this section, taking into account the need for the report within the time period authorized.

Table 4.2

RECOUPMENT OF
PETROLEUM OVERCHARGE FUNDS

		Spending savings			
		FY86	FY87	FY88	Total
		(In millions of dollars)			
Reconciliation instruction	BA	-994	-344	-344	-1,682
	O	-1,186	-365	-356	-1,907
Committee recommendation	BA	-100	0	0	-100
	O	-100	0	0	-100

FEDERAL ENERGY REGULATORY COMMISSION.

User fees and annual charges.

Background: The existing authority of the Federal Energy Regulatory Commission (FERC) to recover its costs varies. For example, in the case of natural gas pipelines, its authority under the Independent Offices Appropriations Act to assess fees is limited to recovering the costs of providing regulatory "benefits," such as granting certificates permitting the construction of new facilities. By comparison, in the case of hydroelectric licenses, its authority under the Federal Power Act extends to the full recovery of all costs associated with granting licenses for hydroelectric projects and regulating the operation of such projects.

Recommendation: The recommendation of the Committee would grant to the FERC generic authority to collect fees and annual charges in amounts sufficient to reimburse all the costs incurred by the Commission. FERC would have the discretion to determine the most equitable means for recovering its costs through a combination of annual charges and fees. (See table 4.3)

Table 4.3

FERC FEES AND ANNUAL CHARGES

			Spending savings		
		FY86	FY87	FY88	Total
		(In millions of dollars)			
Reconciliation instruction	BA	-31	-56	-56	-143
	O	-31	-56	-56	-143
FERC appropriations	BA	95	95	95	285
	O	95	94	95	284
Existing fees	BA	-47	-48	-49	-144
	O	-47	-47	-47	-144
Committee recommendation	BA	-31	-56	-56	-153
	O	-31	-56	-56	-153

DEPARTMENT OF THE INTERIOR

Great Swamp National Wildlife Refuge.

Recommendation: The recommendation of the Committee provides for the Secretary of the Interior to appoint an interagency task force to develop a systematic and comprehensive environmental clean-up plan for the Great Swamp National Wildlife Refuge in New Jersey. No later than 240 days after enactment, the Secretary shall transmit to the Congress a report on progress in establishing such a task force and implementing the clean-up efforts. Development of such aplan shall be carried out with unobligated funds available to the U.S. Fish and Wildlife Service.

LEGISLATIVE HISTORY

On Wednesday, February 5, 1986, President Reagan transmitted to the Congress his budget for fiscal year 1987. Beginning on February 18, the Committee on Energy and Natural Resources commenced 3-days of hearings on the Administration's proposed budget. Subsequently the Committee transmitted its report to the Budget Committee on February 25.

On June 26, 1986, this process concluded, and reconciliation began, with Congressional approval of S. Con. Res. 120, the Concurrent Resolution on the Budget -- Fiscal Year 1987. The Budget Resolution sets forth the Congressional budget for the Federal government for fiscal years 1987 through 1989.

The conference agreement meets the $144 billion deficit reduction target required by the Gramm-Rudman-Hollings Act. The conference agreement projects deficits of $142.60 billion in FY87, $115.65 billion in FY88 and $77.90 billion in FY89.

As approved, the Budget Resolution contains reconciliation instructions to 9 authorization committees to effect savings in spending authority by changes in (a) existing statutory authorizations and (b) direct spending accounts, within their respective jurisdictions. These committees also were required to report such changes by July 25, 1986.

RECONCILIATION INSTRUCTION.

The budget resolution contains reconciliation instructions to nine Senate committees, including the Energy and Natural Resources Committee, which are required to submit their recommendations to the Senate Budget Committee not later than July 25, 1986. In the aggregate, the reconciliation instructions require savings of $24.2 billion over three years, including $9.168 billion in fiscal year 1987.

The instruction to the Committee on Energy and Natural Resources (section 2(o)) would require the Committee to make changes in laws within its jurisdiction which provide spending authority (as defined in section 401(c)(2)(C) of the Congressional Budget Act of 1974) sufficient to reduce budget authority and outlays; (2) changes in laws within its jurisdiction which provide spending authority other than as defined in section 401(c)(2)(C) of the Act, sufficient to achieve savings in budget authority and outlays; or (3) any combination thereof, as follows: decrease budget authority by $1,025,000,000 and outlays by $1,217,000,000 in fiscal year 1987; decrease budget authority by $400,000,000 and outlays by $421,000,000 in fiscal year 1988; and decrease budget authority by $400,000,000 and outlays by $412,000,000 in fiscal year 1989.

Reconciliation assumptions

Although not binding, two specific assumptions were made as the basis for the reconciliation instruction to the Committee: First, the budget resolution assumes that all direct and indirect FERC costs will be recovered through user fees. Second, the budget resolution assumes Federal recoupment of $2.45 billion in additional petroleum overcharge funds over the next three years, of which $1.25 billion will be recovered in FY87. (See table 4.4)

Recoupment of Petroleum Overcharge Funds: The reconciliation instruction to the Committee assumes enactment of legislation to recover $2.45 billion in additional oil overcharge funds over the next three years, of which $1.25 billion will be recovered in FY87. These recouped funds are to be treated as undistributed offsetting receipts (function 950).

The amounts in the reconciliation instruction do not reflect the full amounts assumed from Federal recoupment of additional oil overcharge funds due to different interpretations by the Senate and House conferees of the disposition of these funds following recoupment. The House conferees assumed that $256 million per year will be distributed to the States to provide overcharged persons with indirect restitution in appropriate administrative and judicial proceedings. Although the Senate conferees did not agree with this assumption, it nevertheless is reflected in the reconciliation instruction to the Committee.

Following Congressional approval of the Budget Resolution, the United States District Court for Kansas approved, on July 7, 1986, the settlement in the Department of Energy Stripper Well Exemption Litigation (MDL No. 378). According to the Department of Energy, under this Stripper Well Settlement and judgment the Department anticipates the ultimate recovery and disposition of approximately $4.5 billion in its remaining crude oil cases and thus addresses all crude oil funds, including funds in other administrative and judicial proceedings "regardless of whether such funds are currently in escrow or whether such cases have commenced on the date of this Order", as noted by Judge Theis in approving the Agreement (See Appendix A for opinion by Judge Theis). The DOE anticipates that the Court, pursuant to the agreement, will order disbursement of funds in mid-August and estimates that it will receive approximately $295 million in FY86 for deposit in the Federal Treasury. In FY87, DOE currently estimates Federal receipts of approximately $375 million. The additional monies collected for deposit in the Federal Treasury, which DOE anticipates will take years to recover, should be approximately $800 million. There are sufficient differences between these DOE estimates of funds currently available in escrow following Court approval of the Settlement and the assumptions in the Budget Resolution that the Senate's earlier position on being held harmless for the purpose of compliance with its reconciliation instruction is critical to the Committee meeting its instruction.

The legislative history on the Budget Resolution anticipated such a court action. The House conferees assumed that in the event that "actions beyond the control of Congress or the Administration make part of these savings unachievable, the committees of jurisdiction would be held harmless for the savings that could not be achieved, if any." This is consistent with a colloquy between Senators McClure, Domenici, Rudman and Chiles during consideration of the Senate Budget Resolution. Senator McClure asked that it be clarified that it was not the intention of the budget resolution to require the Energy Committee to comply with this reconciliation assumption should funds no longer be available for recoupment due to the court settlement of this matter. At the time, Senator McClure was assured by Budget Committee Chairman Domenici that neither the Appropriations

Committee nor the Energy Committee would be obliged to achieve comparable savings elsewhere within the Committee jurisdiction should such recoupment no longer be feasible.

Thus there was apparent agreement on this point despite the fact that the conference report states that the Senate conferees did not accept the House assumption for function 950. But equally important, absent a conference agreement on this assumption, the position of the Senate at the time of passage of the Budget Resolution would govern Senate action. If the Committee would have to disturb or disrupt the Stripper Well Settlement in order for the Committee to achieve the assumed savings in the reconciliation instruction, the legislative history on the Budget Resolution indicates that the Committee would not be expected to do so. Moreover, the consequence would be extensive delay in the Federal government's receipt of the funds to which it is entitled under the agreement. Such delays would be contrary to the balanced budget objectives of the Gramm-Rudman-Hollings Act.

Federal Energy Regulatory Commission Fees: The budget resolution assumes that FERC will be funded at the current program level. The reconciliation instruction to the Committee assumes that FERC will be funded at the current program level, and that all of FERC's direct and indirect costs will be recovered through the use of charges and fees assessed against all companies that are subject to FERC's jurisdiction.

Table 4.4

RECONCILIATION INSTRUCTION ASSUMPTIONS
IN S. CON. RES. 120 FOR
COMMITTEE ON ENERGY AND NATURAL RESOURCES

PROGRAM		Assumed Savings (In Millions of Dollars)			
		FY87	FY88	FY89	Total
FERC User Fees (270)	BA	-31	-56	-56	-143
	O	-31	-56	-56	-143
Petroleum overcharge Funds (950)	BA	-994	-344	-344	-1,682
	O	-1,186	-365	-356	-1,907
TOTAL	BA	-1,025	-400	-400	-1,825
	O	-1,217	-421	-412	-2,050

COMMITTEE ACTION.

The Committee on Energy and Natural Resources met in open business session on July 25 and July 29 to consider its recommendations to the Budget Committee in compliance with its reconciliation instruction in S. Con. Res. 120. On July 29, the Committee, in open business session by majority vote of a quorum present approved the legislative provisions described herein, in compliance with its reconciliation instruction.

Following Congressional approval of the Budget Resolution, the United States District Court for Kansas approved, on July 7, 1986, the settlement in the Department of Energy Stripper Well Exemption Litigation (MDL No. 378).

The Committee adopted an amendment offered by the Chairman to clarify the Committee's intent with respect to the Stripper Well settlement agreement and the July 7, 1986 judgment of the Kansas U.S. District Court approving that settlement. The Committee bill as amended preserves fully the agreement and judgment while at the same time recouping for the Federal Treasury all crude oil overcharge funds not subject to the agreement and judgment. The legislation does not expand or reduce in any way the scope of the funds covered by the Stripper Well settlement agreement or the court's judgment, including the escrowed and deficiency funds in MDL 378, the funds currently in DOE or other escrow accounts, and any other funds in which rights were created or vested by the agreement or judgment. The Committee is aware of the opinion of the Comptroller General that the court did not have the authority to address the disposition of the amounts recovered in the future. To the extent that the agreement or judgment did not cover overcharge funds to be received from future cases, or if the court did not have the legal authority to allocate such funds, the Committee intends that such future overcharge funds be deposited in the Federal Treasury. The Committee believes however that the opinion of the Comptroller is in error and that the settlement agreement does cover such funds and that the court had the legal authority to determine the distribution of such funds. The court's authority and intent, of course, is a matter which will be determined by the courts.

The rollcall vote on reporting its recommendations was 18 yeas and 0 nays, as follows:

YEAS	NAYS
McClure	
Hatfield*	
Weicker*	
Domenici*	
Wallop*	
Warner*	
Murkowski*	
Nickles	
Hecht	
Evans	
Johnston	
Bumpers*	
Ford*	
Metzenbaum*	
Melcher	
Bradley*	
Bingaman*	
Rockefeller*	

---

* Indicates vote by proxy.

SECTION-BY-SECTION ANALYSIS

The recommendations of the Committee appear as title IV of the Omnibus Budget Reconciliation Act of 1986.

TITLE IV - COMMITTEE ON ENERGY AND NATURAL RESOURCES

Subtitle A - Department of Energy Programs

RECOUPMENT OF PETROLEUM OVERCHARGE FUNDS

Crude oil overcharge funds (Sec. 401).

Subsection 401(a) defines "restitutionary amount" for the purpose of sections 402 and 403. Sections 402 and 403 specify the procedure for distribution of restitutionary amounts which are held or received as a result of a settlement, order, or judgment (including a declaratory judgment) involving overcharges resulting from alleged crude oil pricing violations under the Emergency Petroleum Allocation Act of 1973 or the Economic Stabilization Act of 1970.

Statute of limitations (Sec. 402(b)): Subsection 402(b) amends section 18 of the Emergency Petroleum Allocation Act of 1973 to establish a statute of limitations for the commencement of enforcement actions. A new paragraph 18(b)(1) provides that such enforcement actions would be barred unless commencement of such action is filed before the later of January 1, 1987 or six years after the date of the violation upon which the action is based.

Distribution of restitutionary amounts (Sec. 402).

Subsection 402(a) provides for crediting to the general fund of the Treasury any restitutionary amounts to which the Federal government is entitled pursuant to the express terms of a settlement, order, or judgment entered into prior to the date of enactment.

The provision further provides that nothing in the subtitle shall affect any amounts to which persons or classes of persons, other than the Federal government, have an enforceable right, created or vested as of the date of enactment of this Act, under such a settlement, order, or judgment, including the Stripper Well Settlement (MDL No. 378) and judgment.

For the purpose of petroleum overcharge cases under the Emergency Petroleum Allocation Act the Department of Energy regulations define "person" to include any "governmental unit or instrumentality thereof," (10CFR 205.2). The phrase "persons" or "classes of persons" as used in section 402 is intended to include States, territories and possessions of the United States who are parties to such settlements or court order.

Subsection 402(b) direct that, effective on the date of enactment, any restitutionary amounts, other than those governed by subsection (a), shall be credited to the Treasury after identification of and restitution to those persons who have sustained economic injury.

State energy conservation programs (Sec. 403)

Section 403 earmarks up to $256 million of the Federal share of petroleum overcharge funds to be available for each of fiscal years 1987, 1988, and 1989 to supplement funding for the four DOE State Energy Conservation programs.

FEDERAL ENERGY MANAGEMENT.

Section 404 amends paragraph 545(a)(2) of the National Energy Conservation Policy Act (42 U.S.C. 8255(a)(2)), relating to Federal energy management, to permit the use of "average market" energy costs, rather than "marginal fuel" costs", in calculating the energy cost savings of conservation investments in Federal buildings.

MANUFACTURERS ENERGY CONSUMPTION SURVEY.

Section 406 amends section 205 of the Department of Energy Organization Act (42 U.S.C. 7135) to authorize the Administrator of the Energy Information Administration to conduct the new Manufacturers Energy Consumption Survey (MECS). Details are provided in the statutory language. Nothing in this section affects the existing authority of the EIA to collect data under section 52 of the Federal Energy Administration Act of 1974 (15 U.S.C. 790a).

Section 406 (b) repeals the authority for the old "CE-189" survey being conducted by the DOE Office of Conservation and Renewable Energy under Part E of title III of the Energy Policy and Conservation Act (42 U.S.C. 6341-6346).

STUDY OF CRUDE OIL PRODUCTION AND REFINING CAPACITY IN THE UNITED STATES.

Section 407(a) directs the Secretary of Energy, acting through the Energy Information Administration, to conduct a study of domestic crude oil production and petroleum refining capacity and the effects of imports thereon. The findings and conclusions of the Secretary must be transmitted to the President and the Congress within 60 days of enactment (subsection (c)). Subsection (b) provides for notice and reasonable opportunity for public comment.

Within 45 days after transmission to the President of the report of the Secretary, the President shall advise the Congress what his views are on what those legislative or administrative actions, or both, that will be required to prevent imports of crude oil and refined petroleum products from exceeding those import levels which threaten our national security.

Subtitle B - Federal Energy Regulatory Commission

FERC fees and annual charges (Sec. 411).

Subsection 402 authorizes the Federal Energy Regulatory Commission (FERC) to assess and collect fees and annual charges sufficient to reimburse the United States for all of the costs incurred by the Commission. Such fees or annual charges shall be computed by methods that the Commission / determines, by rule, to be fair and equitable. Any monies received under this section shall be credited to the general fund of the Treasury. The Commission may, by rule or order, waive any fee or annual charge for good cause shown.

The Committee anticipates that the Commission will establish a mechanism whereby regulated companies may include these fees and annual charges in their rates. Such a mechanism should allow recovery of these costs on a timely basis.

Subtitle C - Department of the Interior Program

GREAT SWAMP NATIONAL WILDLIFE REFUGE.

Section 422(a) directs the Secretary of the Interior to appoint an interagency task force to develop a systematic and comprehensive environmental clean-up plan for the Great Swamp National Wildlife Refuge in New Jersey. Details of the plan are specified in the statute. Within 240 days of enactment, the Secretary must transmit to the Congress a report on progress in establishing such a task force and implementing the clean-up efforts (subsection (b)). Subsection (c) provides that development of the plan is to be carried out with unobligated funds available to the U.S. Fish and Wildlife Service.

COST AND BUDGETARY CONSIDERATIONS

In compliance with paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the following estimate of the costs of the measure has been provided by the Congressional Budget Office:

CBO COST ESTIMATE

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

Rudolph G. Penner
Director

July 30, 1986

Honorable James A. McClure
Chairman
Committee on Energy and Natural Resources
United States Senate
358 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

The Congressional Budget Office has prepared the attached cost estimate for the Committee print entitled "Title IV, Omnibus Budget Reconciliation Act of 1986".

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

Rudolph G. Penner

cc: Honorable J. Bennett Johnston, Jr.
Ranking Minority Member

CONGRESSIONAL BUDGET OFFICE

COST ESTIMATE

July 30, 1986

1. BILL NUMBER: Not yet assigned.

2. BILL TITLE:

   Title IV, Omnibus Budget Reconciliation Act of 1986

3. BILL STATUS:

   Committee print adopted by the Senate Committee on Energy and Natural Resources, July 29, 1986.

4. BILL PURPOSE:

   The bill specifies a procedure for the distribution of funds received as a result of a settlement, order, or judgment involving overcharges resulting from actual or alleged crude oil pricing violations. The bill also establishes fees and annual charges for the Federal Energy Regulatory Commission, and authorizes the creation of an inter-agency task force for the development of a clean-up plan for the Great Swamp National Wildlife Refuge in New Jersey.

5. ESTIMATED COST TO THE FEDERAL GOVERNMENT:

   The table on the following page summarizes the bill's estimated impact on the federal budget, relative to both current law and the budget resolution baseline as adjusted for enacted legislation.

   Basis of Estimate:

   Subtitle A of the bill specifies the procedure for the distribution of restitutionary amounts involving actual or alleged crude oil pricing violations. The bill directs all restitutionary amounts to which the federal government is entitled to be credited to the general fund of the Treasury. The bill states that nothing in subtitle A shall affect any amounts to which persons or classes of persons currently have an enforceable right, pursuant to existing settlements, orders, or judgments. Such settlements are specified to include the settlement, approved on July 7, 1986, in In Re: The Department of Energy Stripper Well Exemption Litigation, M.D.L. No. 378, in the United States District Court for the District of Kansas.

   Based on information provided by the Department of Energy, CBO estimates that crude oil overcharges not governed by the Stripper Well agreement will total $250 million. For the purpose of this estimate, CBO assumes that $50 million the remaining $250 million in crude oil overcharges will be disbursed to injured parties under the existing provisions for direct restitution, (which are not changed by the proposed legislation). Under current policies, the federal government is expected to receive 50 percent of remaining funds, or $100 million, with the states receiving the other 50 percent. CBO estimates that enactment of this bill will result in additional receipts, and hence reduced outlays, of $100 million in fiscal year 1987, relative to the resolution baseline.

ESTIMATED BUDGET IMPACT OF RECONCILIATION PROVISIONS--CHANGE FROM CURRENT LAW AND FROM THE RESOLUTION BASELINE ADJUSTED FOR ENACTED LAW (by fiscal years, in millions of dollars)

	1987	1988	1989	1990	1991
CHANGES IN DIRECT SPENDING					
CRUDE OIL OVERCHARGES a/					
Estimated Budget Authority	-100	---	---	---	---
Estimated Outlays	-100	---	---	---	---
CONSERVATION PROGRAMS					
Estimated Budget Authority	256	256	256	---	---
Estimated Outlays	64	235	244	192	21
FERC FEES					
Estimated Budget Authority	-31	-56	-56	-56	-56
Estimated Outlays	-31	-56	-56	-56	-56
TOTAL DIRECT SPENDING					
Estimated Budget Authority	125	200	200	-56	-56
Estimated Outlays	-67	179	188	136	-35
CHANGES IN AUTHORIZATIONS					
CONSERVATION GRANTS					
Authorization Level	-256	-256	-256	---	---
Estimated Outlays	-64	-235	-244	-192	-21
OTHER DOE PROGRAMS					
Authorization Level	*	*	*	*	*
Estimated Outlays	*	*	*	*	*
GREAT SWAMP WILDLIFE REFUGE					
Authorization Level	*	*	*	*	*
Estimated Outlays	*	*	*	*	*
TOTAL AUTHORIZATIONS					
Authorization Level	-256	-256	-256	---	---
Estimated Outlays	-64	-235	-244	-192	-21

* Less than $500,000.

The budget impact of this bill falls within budget functions 270 and 950.

a. The amount of funds to be obtained from future oil overcharge settlements or judgments is highly uncertain. The bill language pertaining to any "enforceable right, created or vested," is subject to potential litigation. Such litigation, if it occurs, may affect the timing of overcharges distribution and the amount of funds collected by the federal government for deposit in the Treasury.

The CBO estimate assumes that, if this legislation is enacted, the stripper well litigation agreement will remain in force, governing the distribution of all but about $250 million in crude oil overcharges. This assumption is made because the bill does not repudiate that agreement or direct that the terms of the agreement should not be met—nor does the bill specify that any of the parties to the agreement do not have enforceable rights under the agreement. If further litigation or judicial review alters the distribution scheme established by the stripper well agreement, then the additional funds collected by the federal government as a result of this bill could increase from $100 million (as shown in the above table) to as much as $1,500 million. CBO does not project either the occurrence or the outcome of any future litigation concerning the existing agreement.

Subtitle A also contains a provision that makes restitutionary amounts recovered by the federal government for crude oil overcharges available to the Secretary of Energy for direct disbursement to states for energy conservation programs. The amounts to be disbursed under this provision shall be the lesser of: (1) $256 million less any amounts appropriated for such programs, and (2) the total of restitutionary amounts available. This provision shall apply to fiscal years 1987, 1988, and 1989. CBO estimates that the amounts available, under current law and the other provisions of subtitle A, will be sufficient to fund the conservation programs at the level of $256 million for all these fiscal years. This provision of the bill creates permanent spending authority for the next three fiscal years, where none currently exists; hence it is an increase in direct spending relative to both the baseline and current law. However, the creation of this permanent authority simultaneously reduces the amount of appropriations that would be necessary to reach baseline funding levels by $256 million per year. This change is equivalent to a reduction in authorizations, as shown in the above table. Taken together, the direct spending and the authorization changes for energy conservation program produce no net change in spending relative to the baseline or current law.

Subtitle A contains three additional provisions concerning Department of Energy programs: (1) a revision in the Federal Energy Management Program's procedure for calculating the energy cost savings of conservation investments, (2) an amendment to the Energy Policy and Conservation Act that strikes a requirement to conduct certain energy consumption studies, and (3) a requirement that the Department conduct a study of domestic crude oil production and petroleum refining capacity. These three provisions are expected to reduce federal outlays by less than $500,000 per year, if appropriations are correspondingly reduced.

Subtitle B of the bill requires the Federal Energy Regulatory Commission to assess and collect fees and annual charges to recover all costs incurred by the commission. Under current policies, the commission collects fees that offset approximately 50 percent of its costs. Based on information provided by the commission, CBO estimates that enactment of this bill will result in additional collections, and hence reductions in federal outlays, of $31 million in fiscal year 1987, and $56 million per year for subsequent fiscal years.

Subtitle C of the bill provides for the appointment of an interagency task force to devlelop a systematic and comprehensive clean-up plan for the Great Swamp National Wildlife Refuge in New Jersey. This provision is not expected to have a significant impact on federal outlays.

6. ESTIMATED COST TO STATE AND LOCAL GOVERNMENTS:

The provision for distribution of crude oil overcharge funds is expected to decrease the distribution of such funds to states by $100 million in fiscal year 1987, relative to current law and the resolution baseline. Under this bill, CBO estimates that the states will still receive funds from crude oil overcharge cases that are governed by the stripper well litigation agreement, approved on July 7, 1986.

The annual charges for the Federal Energy Regulatory Commission authorized by this bill would affect electric utility rates, and thus indirectly increase the utility costs of state and local governments. This increase is not expected to be significant.

7. ESTIMATE COMPARISON: None.

8. PREVIOUS CBO ESTIMATE: None.

9. ESTIMATE PREPARED BY: Peter Fontaine (226-2860)

10. ESTIMATE APPROVED BY:

C. G. Nuckols
for James L. Blum
Assistant Director
for Budget Analysis

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

FILED
JUL 07 1986
RALPH L. DeLOACH, CLE
Anne Butler Dep

IN RE: THE DEPARTMENT OF ENERGY)
STRIPPER WELL EXEMPTION LITIGATION)

M.D.L. No. 378

OPINION AND ORDER

Before the Court is a settlement agreement of historic proportions, which represents the culmination of substantial efforts on the part of the litigants involved. This monumental multidistrict litigation has spanned eight years, involved hundreds of parties, entailed voluminous pleadings and concerned a variety of factually and legally complex issues of substance and procedure. At this juncture, the task of the Court is the appropriate distribution of over one billion dollars in escrowed stripper well overcharge funds. The settlement agreement currently before the Court represents a comprehensive charter for the resolution of the immediate matter of satisfactory disbursement of the escrow held under the Court's direction, as well as two related matters: distribution of crude oil overcharge funds in other cases, and settlement of litigation concerning the Department of Energy ("DOE") Entitlements Program.

History of the Litigation

The history of the liability portion of the litigation was summarized in this Court's memorandum and order of September 13, 1983:

> This action is a consolidation of a number of cases brought by oil producers to enjoin the Federal Energy Administration (FEA), now the Department of Energy (DOE), from enforcing Ruling 1974-29, concerning low production oil wells, commonly called "stripper wells." The Court enjoined enforcement of the regulations in question, but ordered the oil producers to deposit into escrow the difference between the stripper well price and the controlled price of crude oil affected by the injunction. As of October 31, 1982, the escrow fund, including interest, contained over one billion dollars.
>
> The issue of the validity of the regulations and Ruling was finally settled in In re The Department of Energy Stripper Well Exemption Litigation, 690 F.2d 1375 (Em. App. 1982), cert. denied, [459 U.S. 1127] (1983), in which the Temporary Emergency Court of Appeals (TECA) reversed this Court's decision and upheld the rulings and regulations as valid. TECA remanded this action to this court, with instructions to enter judgment for DOE, which judgment has been entered. The effect of TECA's decision is to declare the funds deposited in escrow to be overcharges recovered due to violations of the petroleum pricing regulations. The remaining task is the appropriate dispensation of the escrowed funds -- in effect a monumental interpleader action with potential classes and subclasses.

In Re the Department of Energy Stripper Well Exemption Litigation, 578 F.Supp. 586, 589 (D. Kan. 1983).

TECA's decision made it clear that the escrowed funds represented crude oil overcharges and would need to be distributed to or for the benefit of injured parties. Beginning in the months following the TECA decision and continuing until the present time, this Court has received motions for intervention from scores of private and governmental entities and groups, at every level of the crude oil production and distribution chain, who have claimed to be the parties injured by the overcharges. As a result of the Court's orders granting permissive intervention, the parties to this litigation include, in addition to the Department of Energy and the plaintiff-producers:

1. a number of refiners, that claimed injury as a result of the impact of the overcharges on the Entitlements Program, as well as, in some cases, by virtue of their direct purchases of crude oil;
2. groups of petroleum product resellers and retailers, that claimed injury as a result of having paid, but having been unable to pass on, a portion of the overcharges;
3. a number of individual customers and consumer groups (including airlines, truckers and other motor vehicle users, and utilities), that claimed the overcharge costs had been passed along to them; and
4. states and territories that claimed the

funds at issue as representatives of their citizens who allegedly paid higher prices as a result of the overcharges.

On September 13, 1983, this Court granted the motion of the Department of Energy to refer the issue of who was injured by the overcharges to the Office of Hearings and Appeals ("OHA") to conduct factfinding and attempt to trace the impact of the overcharges. On December 30, 1983, the OHA published in the Federal Register a public notice concerning the factfinding referral, which notice discussed the background of the litigation and invited public comments on all aspects of the referral, including the impact of the overcharges and possible refund distribution mechanisms. 48 Fed. Reg. 57608. In response to the notice, the OHA received over one hundred comments, including many comments from entities and groups not parties to this litigation. See Report of the Office of Hearings and Appeals of the Department of Energy, In Re Department of Energy Stripper Well Exemption Litigation, at Appendices A and B (June 19, 1985)("OHA Report").

On May 9, 1984, the OHA published another notice in the Federal Register, announcing that it would hold an evidentiary hearing on the feasibility of tracing the impact of the overcharges. 49 Fed. Reg. 19718. That hearing was held over a period of twenty-two days, between June and October of 1984. Sixty-four public and private entities, representing thousands of members, participated actively in the hearing.

Over thirty witnesses, most of whom were nationally recognized economists, econometricians and statisticians, testified, and a record of almost 13,000 pages of written and oral presentations was compiled.

On June 21, 1985, the DOE submitted the OHA Report, together with the DOE's Statement of Restitutionary Policy, to this Court. Based on the evidence which it had received and evaluated, the OHA concluded that it was impossible to trace directly the impact of the overcharges. OHA Report at 25. However, with respect to the Entitlements Program participants, the OHA estimated that 2.7 to 8.1 percent of the overcharges were absorbed by the refiners as a class, while an estimated 91.9 to 97.3 percent of the overcharges were borne by resellers, retailers and consumers, in the aggregate. _Id._ at 77-83. The DOE's Statement of Restitutionary Policy, which was published in the Federal Register, recommended that the funds remain in escrow while the Congress was given an opportunity, during its next session, to select appropriate means for restitution. 50 Fed. Reg. 27400 (July 2, 1985). If Congress did not enact legislation providing a specific means of distribution, the DOE Statement recommended that the escrowed money should be paid to the general fund of the United States Treasury. Further, the DOE proposed to apply this restitutionary policy to other overcharge funds in crude oil cases in which it was impossible to trace the effects of the overcharges.

On June 14, 1985, and September 20, 1985, respectively, the National Council of Farmer Cooperatives and Consumers Power Company moved to intervene in this multidistrict litigation. On October 3, 1985, the Court permitted their intervention because both parties had participated in the OHA fact-finding process. The Court stated that unless potential intervenors had appeared before the OHA, intervention would be denied absent extraordinary circumstances. On January 23, 1986, a number of groups purporting to represent low-income persons who used energy for home heating during the overcharge period filed an application to intervene. The Court denied this application on February 27, 1986, on the grounds that (i) several of the groups had failed to participate in the OHA proceedings and (ii) with respect to those groups which had participated before the OHA, the groups had not made a claim for the escrowed funds and the interests of their consumer constituents were "fully protected by the longstanding and active participation of the States and the Department of Energy" in this litigation. Dk. no. 746, p.2. In the past several months the Court has received, but has not yet ruled on, applications for intervention from a number of additional groups which had not previously appeared before the Court and which did not participate before the OHA: the Association of American Railroads, the American Waterways Operators, Inc., the Council of American Flag-Ship Operators, the National Congress of

American Indians, and Southland Royalty. These applications for intervention were filed only after settlement negotiations had been conducted for several months and had culminated in a proposed settlement agreement, the existence of which was widely publicized.

On August 8, 1985, the Court held a status conference to establish a schedule for filing comments on the OHA Report and the DOE Statement. At that hearing a number of parties indicated their opposition to the findings and conclusions contained in the OHA Report. The parties also informed the Court that efforts were underway to settle the restitutionary issues in this litigation. The Court set September 23, 1985, as the deadline for the parties to submit written comments.

On September 12, 1985, the Court was informed that the OHA had prepared a draft version of its final report. Because of disputes concerning the draft report, the Court extended the deadline for filing comments on the OHA Report. Thereafter, the Court postponed the deadline several times because of the pendency of settlement negotiations. Upon the submission of the proposed settlement agreement to the Court, further proceedings regarding the OHA factfinding and the DOE Statement were postponed and the order setting a date for the submission of comments was vacated.

The Settlement Agreement

The parties to the settlement agreement include the

Department of Energy, the fifty States and six Territories and Possessions ("the States"), the Refiners, the Resellers, the Retailers, the Agricultural Cooperatives, the Airlines, the Surface Transporters, and the Utilities. Vigorously contested negotiations were conducted by the representatives of each of these parties from November of 1985 through May 21, 1986, when the DOE signed the settlement agreement.

The agreement addresses three distinct matters: distribution of the Court's escrow and other funds relating to the injection well issue; distribution of crude oil overcharge funds in cases unrelated to the instant action; and resolution of extensive litigation concerning the DOE Entitlements Program. The distribution of the escrow monies, monies attributable to the injection well issue but not yet deposited into the escrow (deficiency funds), and monies in unrelated cases is predicated upon the DOE's estimate that the total of all such funds will be between four and five billion dollars. That amount includes the Court's escrow, which amounts to over one billion dollars, and an additional $333 million collected and held by the DOE as a result of a prior settlement of a case involving the injection well funds previously deposited with this court. See 51 Fed. Reg. 56 (January 2, 1986).

The agreement authorizes, in Parts II.A and B, the distribution of escrow funds to the Refiners and the Intervenors other than the States in specified amounts, as follows:

Refiners	$298,514,000
Retailers	58,460,694
Resellers	58,460,694
Agricultural Cooperatives	45,476,983
Airlines	38,987,129
Surface Transporters	10,750,000
Rail and Water Transporters	9,750,000
Utilities	5,250,000

The balance in the escrow, including whatever deficiency funds are collected in the future, will be divided between the United States and the States for energy-related uses for the public benefit.

The Refiners will distribute their escrow in order to effectuate a settlement of other pending litigation concerning the Entitlements Program. To achieve that end, the funds received by the Refiners will be distributed according to the Refiners Escrow Agreement. *See* Final Settlement Agreement, Exhibit A, Dk. no. 814. Of the $298,514,000 to be distributed to the Refiners, $257,238,800 will be distributed among those refiners who would have had the right to sell entitlements if the remaining entitlements notices had been issued; $19,787,600 will be distributed, based on "runs-to-stills" (volume refined), among refiners who would have had to buy entitlements; another $19,787,600 will be distributed among all refiners based on runs-to-stills; and $1.7 million will be paid to Consumers Power, a cooperative utility that operates a refinery.

Many elements of the distributions of Resellers, Retailers, Airlines and Co-ops are essentially identical and are summarized here. An Initial Distribution will be made to each of the parties' escrow accounts in the following amounts:

Resellers	$44,690,371
Retailers	44,690,371
Airlines	29,793,581
Co-ops	34,751,177

One year from the date of this Order, provided a sufficient amount of deficiency funds have been collected, each escrow account will receive a Second Distribution, as follows:

Resellers	$13,790,323
Retailers	13,790,323
Airlines	9,193,548
Co-ops	10,725,806

The States and the DOE will divide all residual funds currently available on the date of the Order, and subject to payment of the Second Distribution, all future funds deposited in the Court's escrow. As discussed below, the States and the DOE will also divide crude oil funds administered by the OHA, and other crude oil overcharge funds. Initially, the DOE will advance $200 million to the States to be repaid from future crude oil funds. Furthermore, $50 million from funds in the Court's escrow which would otherwise be distributed to the DOE will be reserved to assure the payment of the first $50 million from funds administered by the OHA to the States.

When the DOE disburses those funds pursuant to the agreement, the $50 million reserve will be paid to the DOE. Thus, assuming $1.433 billion in this Court's escrow and payment to all other parties, the States will receive $660 million and the DOE will receive $260 million, assuming payment of the $50 million from the OHA's funds. After repayment of the DOE advance, all further funds will be divided equally between the DOE and the States.

The fifty-six jurisdictions to receive funds include the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, the Northern Marianas, Guam and American Samoa. The funds are allocated based on consumption of petroleum products during the period of controls, as determined by the DOE. See Final Settlement Agreement, Exhibit H. After the disbursements are made on the Payment Date established by the agreement, and after the Second Distributions to the Resellers, Retailers, Airlines and Co-ops have been funded, there will be a distribution every ninety days or when the escrow thereafter reaches $10 million. Further payments to the States from deficiency funds will reflect an apportionment to assure repayment to the DOE of the funds advanced by the DOE to the States.

Each State has discretion to select among energy-related programs identified in the agreement or otherwise approved by an appropriate court or the OHA, that are designed to benefit consumers of petroleum products within the States (which may include motor vehicle operators, electric utility customers, home heating oil customers and other end-users of petroleum products). Before receiving the funds, the Governor of each jurisdiction must assure that they will be utilized for such programs, and must identify the programs prior to spending the funds. Among the approved programs are the five identified by Congress in the Warner Amendment, Section 155 of the Further Continuing Appropriations Act of 1983, Pub.L. No. 97-377, and the programs identified in Exhibit J to the Agreement. Each State must provide public notice and a public hearing prior to selecting the programs for which it will spend the funds. The States may use a portion of the funds received, up to the amount permitted by legislation or up to five percent, for program administrative expenses, attorney fees and other litigation costs.

The DOE will receive the funds discussed above and will obtain repayment of the amount advanced to the States, identified above, from deficiency funds and from the OHA funds. Funds received by the DOE will be deposited in the United States Treasury or will be held in reserve to meet the DOE's obligation to fund entitlements exception relief.

Under the settlement agreement, the DOE will modify its June 21, 1985, Statement of Restitutionary Policy governing crude oil funds by providing an opportunity in special refund proceedings pursuant to 10 C.F.R. Subpart V for non-settling waiving claimants to submit any claims of injury from an alleged crude oil violation, and by dividing between the federal government and the States all funds not distributed to successful claimants. Funds received by the States under such proceedings will be allocated and used for the same purposes and in the same manner as funds received from the Court's escrow. The requirements for letters of assurance from the Governors, public hearings, identification of programs prior to expenditures, limitations on programs and reporting requirements are identical to those which apply to funds from the Court's escrow. Funds received by the DOE as a result of this policy will be subject to the same limitations on uses as described above, i.e., for deposit in the Treasury or to fund entitlements exception relief. The DOE will recommend that all judicial cases involving crude oil be resolved similarly.

All parties and claimants receiving funds under the agreement will waive any further claims to crude oil refunds. In light of the waivers which have already been signed and the tens of thousands of additional waivers which are expected to be signed, few claims by non-waiving individuals asserting injury are likely to be filed at the OHA in other crude oil cases. As a result, the policy to be adopted by the DOE will be to establish an initial reserve for such claims amounting to twenty percent of the funds received by the DOE and to disburse the remaining eighty percent in advance of the implementation of a claims procedure. The reserve in the OHA will assure the availability of adequate funds for successful claimants. The DOE will issue the modified policy statement twenty days from the date of the Court's Order, and will distribute the available OHA crude oil funds, amounting to at least $100 million, ten working days later.

The question of the deficiency funds to be paid to the Court's escrow is not resolved by this agreement. As to most of the firms involved, discovery has not been completed. These matters must be resolved on a company by company basis. While the agreement does not resolve any of the deficiency issues, it calls for cooperation among the parties to the agreement to expedite resolution of discovery issues, for the payment of uncontested amounts of deficiencies, for the waiver of penalties and for dismissal of any producer party when its deficiency has been satisfied.

There are two cases before the Court which are not part of M.D.L. No. 378: *Kerr-McGee Corp. v. Gulf Oil Corp.*, Civil Action No. 84-1061, and *Total Petroleum Corp. v. Muskegon Oil Co.*, Civil Action No. 85-1966. Gulf and Muskegon have paid funds into the Court's escrow. The agreement establishes reserves within the escrow in the amounts of $30 million for *Kerr-McGee* and $10 million for *Total*, in the event the Court determines that any judgment should be satisfied from such funds. *See* Final Settlement Agreement, ¶ II.C.2. However, the parties to the agreement retain the right to challenge the position that judgments in these cases may be paid from the Court's escrow.

Comments Regarding the Settlement Agreement

The parties to M.D.L. No. 378 (with one exception) and to the settlement filed a joint memorandum in support of the settlement agreement. Several other interested parties, such as Shell Oil Company and the American Trucking Association, Inc., also filed individual supporting memoranda. Only one party to M.D.L. No. 378 which made a claim before the DOE for the escrowed funds did not sign the agreement. That party, Total Petroleum, initially filed an objection to the agreement. Total's concerns have been resolved by the parties and Total has withdrawn its objection. The Association of American Railroads, the American Waterways Operators, Inc., and the Council of American Flag Ship Operators (previously listed generically as "Rail and Water Transporters") originally filed objections to the proposed settlement, which objections were later withdrawn.

The Georgia Poverty Rights Organization ("GPRO") and the National Congress of American Indians ("NCAI") both submitted letters to the Court which reflected their particular concerns. The GPRO requested that the settlement agreement mandate that each State expend a proportionate share of its funds on identifiable low-income programs, depending on the percentage of low-income households in the State. The NCAI requested a similar apportionment for tribal programs, based on the percentage of Native Americans within each State. As a result of negotiations, the signatories to the agreement and NCAI agreed that NCAI would withdraw its motion to intervene in exchange for the States conferring on the tribal governments and their citizens an appropriate equitable share of the benefits from State energy-related restitutionary programs either as a part of the programs benefitting the general population or otherwise. Dk. no. 846. The GPRO has agreed to dismiss its appeal in exchange for similar considerations. Dk. no. 843. In both cases, the concerns expressed by these groups were directed solely at the conditions governing the States' uses of the funds under the agreement; and in both cases, stipulations as to language and criteria resolved the incipient obstacles.

Muskegon Development filed comments supporting the settlement, but asked that an additional amount of $573,132.48, plus interest since February 28, 1986, be added to the set-aside for Total Petroleum Corp. v. Muskegon Development Co., Civil Action No. 85-1968-T, since the $10 million called for in the agreement is no longer adequate to cover fully the claims made in that case. The parties to the agreement have indicated that they have no objections to this addition.

Southland Royalty Company filed an opposition to the agreement, alleging that the settlement would adversely affect Southland's claim that Gulf Oil Corporation erroneously deposited in the Court's escrow monies owed to Southland. Specifically, Southland claims that Gulf deposited funds into the escrow which properly qualified for uncontrolled prices under the DOE's tertiary incentive regulations, a petroleum production matter which was not before this Court in M.D.L. No. 378. DOE has opposed any withdrawal of escrowed funds deposited by Gulf because the DOE asserts that Gulf has not paid all that it owes. If Southland can substantiate its claims, the DOE has no objection to paying Southland once all of Gulf's deficiencies are satisfied. The parties to the agreement have proposed to establish a set-aside of $6 million. Southland has accepted this offer.

Congressman John Dingell, Chairman of the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce, wrote a letter to the Court delineating certain objections to the settlement agreement. Later in this opinion the Court will address in detail Congressman Dingell's concerns.

Finally, on June 12, 1986, this Court held an open hearing on the settlement agreement. Over seventy attorneys attended the proceedings. At this hearing, parties in favor of and opposed to the settlement agreement were given the opportunity to comment on the agreement. A number of parties spoke in favor of the agreement. Because of its concerns regarding the set-aside, Southland spoke in opposition to the agreement.

Court Approval of the Settlement Agreement

In its review of the settlement agreement, the Court is guided by a number of principles. As a matter of public policy, the law favors and encourages settlements. *Bass v. Phoenix Seadrill/78, Ltd.*, 749 F.2d 1154 (5th Cir. 1985); *Amoco Production Co. v. Federal Power Commission*, 465 F.2d 1350 (10th Cir. 1972). The settlement of actions should be fostered to avoid protracted, wasteful and expensive litigation. *Pfizer, Inc. v. Lord*, 456 F.2d 532 (8th Cir.), *cert. denied*, 406 U.S. 976 (1972). Particularly in complex cases the litigants should be encouraged to determine their respective rights between themselves. *See Manual for Complex Litigation, Second*, § 23.11 (1985). It is in the interests of the courts and the parties that there should be an end to litigation, and the law favors the peaceful settlement of controversies.

Before the Court can approve a proposed settlement, it must find that the agreement is fair, adequate and reasonable, and is not the product of fraud by or collusion among the negotiating parties. *Ficalora v. Lockheed California Co.*, 751 F.2d 995 (9th Cir. 1985). In the context of government enforcement consent decrees, courts have held that "[u]nless a consent decree is unfair, inadequate or unreasonable, it ought to be approved." *SEC v. Randolph*, 736 F.2d 525, 529 (9th Cir. 1984). The approval of a settlement agreement does not depend on an exact determination of the merits of the dispute. There is no talismanic formula for ascertaining when a settlement is reasonable. Rather, "[t]he evaluation of a proposed settlement requires an amalgam of delicate balancing, gross approximations and rough justice." City of Detroit v. Grinnell, 495 F.2d 448, 468 (2nd Cir. 1974).

A determination of whether a settlement is fair, adequate and reasonable requires an analysis of the risks and potential rewards of continued litigation compared to the actual benefits achieved by the proposed termination. The factors a court must consider include the complexity, expense and likely duration of the litigation, the stage of the proceedings and the amount of discovery completed, the opinions of the negotiating parties' counsel, the arms-length nature of the negotiations and the reaction of parties opposing the settlement. See Reed v. General Motors Corp., 703 F.2d 172 (5th Cir. 1983); Walsh v. Great Atlantic & Pacific Tea Co., Inc., 96 F.R.D. 632 (D.N.J. 1983); Susquehanna Corp. v. Korholz, 84 F.R.D. 316 (D. Ill. 1979).

An assessment of these factors convinces the Court that the settlement agreement, taken as a whole, is fair, reasonable and adequate to all concerned parties. The agreement was reached after arms-length negotiations among a wide range of groups representing competing interests. The negotiations were extensive and hard-fought. The very fact that objections to the agreement were lodged in the record and later withdrawn attests to the process of compromise. Counsel entered into the negotiations well-versed in the merits of their clients' claims. Although the Court has independently evaluated the proposed settlement, the professional judgment of counsel involved in the litigation -- who have made a determination that the settlement represents a fair allotment for their clients -- is entitled to significant weight. *Johnson v. Montgomery County Sheriff's Dept.*, 604 F.Supp. 1346 (D. Ala. 1985); *In re Baldwin-United Corp.*, 105 F.R.D. 475 (S.D.N.Y. 1984).

Moreover, that a government agency, which is committed to the protection of the public interest, has participated in the compromise negotiations and endorsed their results is a factor in favor of settlement approval. *Marshall v. Holiday Magic, Inc.*, 550 F.2d 1173 (9th Cir. 1977); *Jones v. Amalgamated Warbasse Houses, Inc.*, 97 F.R.D. 355 (E.D.N.Y. 1983). The Department of Energy has participated extensively throughout the liability, damages and settlement phases of this complex and protracted litigation. Furthermore, pursuant to government procedures, the settlement agreement was scrutinized and approved by both the Department of Justice and the Office of Management and Budget ("OMB").

Finally, the near-unanimous support for the settlement agreement is a factor favoring approval by the Court. While a settlement stands or falls on its merits and not on a head count between its proponents and objectors, the overwhelming support for the settlement carries some persuasive force. The joint motion in support of the settlement agreement is signed by representatives of the DOE, the fifty-six States and Territories, over ninety-eight percent of the participants to the DOE entitlements program, the refiners, resellers, retailers, airlines, agricultural cooperatives, surface transporters and utilities. Equitably also the other major non-parties or intervenors who were primary industrial users of petroleum products during the price-control period, viz., the railroads, steamship lines and barge lines, have been included in the distribution contemplated by the settlement and have withdrawn their objections and joined the settlement. There is no opposition to the settlement agreement by any party to the litigation.

The agreement provides substantial benefits for all parties and for the public, and it represents a fair compromise of the parties' competing positions. The agreement provides a significant amount and major portion of the funds to the States and to the federal government on behalf of the consuming public. The Temporary Emergency Court of Appeals has approved the form of relief in which restitutionary funds are channeled through the States for use in enumerated energy programs designed to benefit the public. United States v. Exxon Corp., 773 F.2d 1240 (TECA 1985), cert. denied, 106 S.Ct. 892 (1986). By according the States latitude in selecting the programs that will best meet the needs of their particular citizens, the agreement allows the States to benefit various categories of petroleum consumers who may not receive direct refunds under the agreement. In addition, the agreement provides for payments to the United States Treasury, which will "fulfill the restitutionary goal of requiring plaintiffs to disgorge their judicially-determined illegal gains." In Re Department of Energy Stripper Well Exemption Litigation, 578 F.Supp. at 595. At the same time, the agreement reserves to the DOE the prosecutorial discretion necessary for it to complete pending and future enforcement actions arising from the era of petroleum price controls.

The ratio of apportionments to the refining industry under the settlement agreement falls within the range of overcharge estimates established in the OHA Report. Assuming that the total amount of crude oil overcharges will be between four and five billion dollars, the $298 million to be divided among the Entitlements Program participants is between 6 and 7.5 percent of the total, which is within the 2.7 to 8.1 percent range of overcharges the OHA determined that the refiners absorbed as a group. In exchange for this apportionment, a number of refiners have compromised other claims they asserted to the fund as first purchasers. Similarly, the distribution through a claims procedure of $215 million to petroleum resellers and retailers, agricultural cooperatives, airlines, surface transporters and utilities, will fairly and adequately compensate the members of these groups. While these groups originally requested a much larger percentage share of the escrowed funds, the Court agrees with the parties' own assessments that the settlement is in their best interests.

The risks of continued litigation are substantial for all of the parties. If the remedy issues were not resolved by agreement, each of the parties would face the risk of a significantly reduced recovery or no recovery at all. Since the OHA Report concluded that the refiners as a class were injured and that the remainder of the overcharges were passed on to resellers and consumers, the recoveries obtained by the DOE and the States under the agreement would not have been assured otherwise. Likewise, the private parties to the litigation faced the risk that the Court would direct all of the funds to the United States Treasury and the States. Thus, the benefits accruing to parties under the agreement outweigh the risks of continued litigation.

In addition, the agreement protects the interests of non-parties and of parties to other pending litigation. Insofar as the agreement provides set-asides to satisfy final judgments in private overcharge actions, it secures the rights of parties to that litigation. The agreement also allows the OHA to reserve amounts to satisfy claims of injury from overcharges by non-parties. Furthermore, the settlement will immediately free funds held by the OHA for the benefit of injured consumers.

The agreement will permit the resolution of (i) claims to other crude oil overcharge funds which have been or will be recovered by the DOE in a great many administrative or judicial proceedings; and (ii) the litigation between the DOE and numerous refiners over the termination of the Entitlements Program, which has been pending in some cases for more than five years. Thus, after payment of the specified amounts referred to above, the agreement provides for an equal division between the DOE and the States of crude oil overcharge refunds to be recovered in all other administrative and judicial proceedings, regardless of whether such funds are currently in escrow or whether such cases have commenced on the date of this Order. Furthermore, the agreement will release most private crude oil overcharge claims among and against the parties, thereby avoiding additional litigation.

Muskegon has requested a modification of the agreement. The parties anticipated that the $10 million set-aside created in paragraph II.C.2. of the agreement would be sufficient to satisfy any judgment obtained by Total in its action against Muskegon. The parties have stated that they would have no objection to the set-aside being increased by $573,132.48, plus interest from February 28, 1986, to reflect the full amount of escrowed funds attributable to Muskegon's sales to Total as of February 28, 1986. The Court finds that this adjustment is appropriate and in accord with the agreement.

Similarly, the set-aside proposed for Southland fully satisfies any claim Southland might have against the escrowed funds. The parties were able to arrive at an agreement with respect to terms and conditions. However, the Court notes that much of the dispute between the DOE and Southland involved concerns not germane to the litigation surrounding the escrowed funds. The Court finds that the interests of Southland are adequately provided for by the set-aside.

The public interest will be advanced by the value of an immediate recovery, which will avoid the delay and expense of further litigation. This litigation has been pending since 1978. Numerous issues would remain to be resolved by this Court in the absence of a settlement agreement. In addition, the agreement's release of most private crude oil overcharge claims among the parties will avoid additional litigation. By conserving the very substantial amount of time and resources which the courts, the DOE, the States and numerous private parties would otherwise be required to expend in these proceedings, the agreement promotes the public interest in a very broad sense.

The only extant opposition to the fundamental mechanics of the settlement agreement comes to the Court in the form of a letter from Congressman John Dingell, Chairman of the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce, which letter the Court has ordered to be made a part of the court file in this case. Because the Subcommittee on Oversight and Investigations represents the public interest, and both in the past and in the present has and is performing a very praiseworthy function in oversight of federal governmental policies and actions, the Court believes it is important to address the concerns raised by Congressman Dingell.

First, Congressman Dingell contends that the settlement agreement has not been subject to public scrutiny. Initially, there is some confusion with respect to what the DOE regulations require in the form of public comment. See 10 C.F.R. § 205.199J. However, the Court need not pass upon whether the DOE regulations apply to court-approved settlement agreements or only to consent orders and administrative documents for two significant reasons. If the DOE regulations have not been adhered to, that is an internal matter for the DOE and Congress to resolve in a forum other than the present one. More importantly, though, the Court believes the final settlement agreement has undergone adequate public scrutiny.

The most interested parties have either signed the settlement agreement or have expressed their concerns to the Court. The Court has received numerous letters regarding the settlement, from groups such as the Associated Catholic Charities of Baltimore, the Georgia Poverty Rights Organization, Project Independence, and the Public Utility Law Project of New York, Inc., to name but a few. Furthermore, groups and entities specifically designated to represent the public interest -- such as the Department of Energy and the fifty States' attorneys general -- have participated extensively in these proceedings and have subjected the settlement agreement to the closest scrutiny. Additionally, it is a prime function of the Court in reviewing the settlement agreement to determine whether the settlement adequately protects the public interest. See United States v. Hooker Chemical & Plastics Corp., 607 F.Supp. 1052, 1057 (W.D.N.Y. 1985). To that end, on June 12, 1986, the Court conducted a publicly visible settlement conference, which was attended by over seventy attorneys and numerous representatives of the press. As the history of the Court's referral of the overcharge issues to the CHA demonstrates, there has been public participation at every step of these proceedings. In addition, the settlement agreement itself requires a public hearing process in advance of any State's distribution of funds. See Final Settlement Agreement at II.B.3.f.i.

Finally, public scrutiny is but a means to the end of insuring that public interests are protected. The Court is convinced that the proposed settlement agreement will inure to the public good. The Court delineated many of the benefits of the settlement above. Any lingering doubts regarding the protection of the public are dispelled by the provisions of the settlement agreement itself. The programs to which the States may target their funds are specifically detailed in the agreement. Final Settlement Agreement at II.B.3.f.ii. The funding for state programs may only be used to supplement, not to supplant, other funds directed at those state programs. Such funding would require decisional authority of the highest state executive officials, i.e., the Governor and Attorney General, with latitude for state legislative input. Id. at II.B.3.f. Finally, the settlement agreement provides for both DOE and Court oversight of State expenditures. The settlement agreement, which affords significant public benefits, has been and will continue to be subjected to the most searching public scrutiny.

Second, Congressman Dingell suggests that the settlement agreement is inconsistent with House Concurrent Resolution 337, which required that reconciliation legislation concerning oil overcharge matters be enacted by the 99th Congress. The Court appreciates being apprised of legislative actions. However, a House Resolution is not tantamount to legislation passed by both chambers and signed by the President of the United States.

A House Committee Report regarding the Resolution assumed this Court would take no action on the proposed settlement agreement so that Congress could act in its stead. In light of the separation of powers, and with utmost respect for Congress as a primary source of "the supreme law of the Land" under Article VI, the Court declines to remain dormant. One purpose of the separation of powers is to prevent an unnecessary and dangerous concentration of power in one branch. Chadha v. Immigration and Naturalization Service, 634 F.2d 408, 422 (9th Cir. 1980), aff'd, 103 S.Ct. 2764 (1982). The separation of powers was not instituted with the idea that it would promote governmental efficiency, but was looked to instead as a bulwark against tyranny. United States v. Brown, 381 U.S. 437, 443 (1965); Federalists 48, 51 and 71.

Inaction on the part of this Court would be an abdication of its constitutional responsibilities. Conversely, any action taken by this Court would resolve a matter particularly within the province of the judiciary: eight years of multidistrict litigation. Furthermore, action on the part of this Court will not impede or impair the legislature from performing its constitutionally assigned function. Congress possesses full authority to pass any legislation it deems wise and proper. But the task of adjudication of matters which are ripe for decision must be left to Article III tribunals, of which this Court is one, acting additionally with multidistrict authority under Congressional legislation with appellate court review.

Third, Congressman Dingell complains that the settlement agreement improperly links the stripper well cases with litigation pending in another court concerning entitlements. The negotiated settlement gives the refiners a percentage of the overcharges within the range of the estimates contained in the OHA Report. Since the OHA Report could not trace specific overcharges, if the refiners choose to distribute their allotment along the lines of standards set in the entitlements litigation, that is entirely permissible. Furthermore, there is no improper linkage of petroleum cases. That the settlement paints with a broad brush does not persuade the Court that the agreement is unreasonable. On the contrary, compromise is the essence of settlement, and parties may settle more than one case at a time. Nelson v. Waring, 602 F.Supp. 410 (D. Miss. 1983).

Fourth, Congressman Dingell contends that the settlement agreement would moot the proposed restitutionary policy that the DOE submitted to this Court. It should be noted the referral of this matter to the DOE was limited to fact-finding regarding tracing of the payment of the overcharges for the ultimate purpose of assisting the Court in the exercise of its restitutionary jurisdictional power. The DOE's policy proposal was not binding on the Court or cloven in stone for Congress. The Court does not agree with Congressman Dingell's view that changes in position are inherently mischievous:

> Although perhaps irritating to a court and grounds for skepticism, such changes are not impermissible. As noted in Montana Power Co. v. EPA, 608 F.2d 334, 349 (9th Cir. 1979), "it does not matter that [a party] 'switched horses in midstream' as long as it 'was astraddle a good horse when it reached the other side.'" See also Public Service Comm'n v. FPC, 511 F.2d 338, 353 (D.C. Cir. 1975) (agency may "switch rather than fight the lessons of experience").

Texaco, Inc. v. Department of Energy, Nos. 3-44 through 3-49, at 3 n.6 (TECA, unpublished, May 30, 1986). In the instant case, the DOE policy, as modified by the settlement agreement, provides a claims procedure and protects the rights of non-parties who have not participated in the court process -- changes which the Court perceives are for the better.

Fifth, according to Congressman Dingell, a number of the agreement's terms are contrary to an opinion of the General Accounting Office ("GAO"). However, many of the GAO's complaints concern the settlement of the entitlements litigation in tandem with the stripper well litigation, an issue the Court previously addressed. In Congressman Dingell's statement in opposition to the motion to approve the settlement agreement, he states that "[a]pproval of the Settlement Agreement would put this Court in the position of appearing, at least, to overrule the GAO without ever hearing from that agency." Dk. no. 836, p.13. As the Court explained above, the principle of separation of powers prohibits judicial subservience to the various sentiments of coordinate branches. Furthermore, this Court is without jurisdiction to pass upon the policy statements of the GAO. With respect to the substance of Congressman Dingell's contention, the Court chooses to rely on the expertise of the DOE -- which has participated in these multidistrict proceedings since their inception -- in determining when it should compromise its stances in various cases to bring about a salutary resolution of the greatest amount of litigation. The DOE decision is buttressed by approval of the Justice Department and the OMB.

Finally, Congressman Dingell questions the administrative and attorneys fees that will come from the oil overcharge money under the terms of the settlement agreement. While the simultaneous negotiation and deduction of fees from a settlement fund is not to be encouraged, it is not improper. *Piambino v. Bailey*, 757 F.2d 1112 (11th Cir. 1985); *Mendoza v. Tucson School District No. 1*, 623 F.2d 1338 (9th Cir. 1980), *cert. denied*, *sub nom* *Sanches v. Tucson Unified School District No. 1*, 450 U.S. 912 (1981); *In Re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions*, 410 F.Supp. 706 (D. Minn. 1975). Because of the arms-length nature of the bargaining and the presence in the negotiations of participants designated to represent the public interest, the Court is persuaded that the allocation of administrative and attorneys fees involved no improper arrangements or sweetheart deals. The administration of the proposed settlement will entail a great deal of management and accounting expenses.

Furthermore, a number of safeguards contained in the agreement will prevent any possible excesses. The amounts of administrative expenditures the States are permitted to make are subject to legislative and regulatory caps or to a limit of five percent of the funds allocated to the States. Final Settlement Agreement at II.B.3.f.iii. Thus, the States' fee requests are reasonable in terms of the percentage they represent of the total overcharge. *See Blum v. Stetson*, 104 S. Ct. 1541, 1549-50, n.16 (1984). The attorneys general must file with the disbursing officials written notices of the amount and manner of direct disbursements for payment or reimbursement of litigation expenses. *Id*. Prior to the expenditure of any funds or payments permissible under the agreement, the States must submit reports to this Court and to the Secretary of Energy identifying the programs or payments for which such funds will be expended. *Id*. at II.B.3.f.iv. Thus, the Court interprets this provision as authorizing Court oversight of the expenditures for administrative and attorneys fees. With respect to the surface transporters and the utilities, the disbursement of attorneys fees is specifically made subject to Court approval. *Id*. at Exhibits F and G. In light of the built-in checks on the propriety of expenditures, the Court finds that the allotments for administrative and attorneys fees are proper.

In conclusion, the Court finds that the benefits of the settlement agreement far outweigh the burdens that continued litigation would entail. The terms of the agreement equitably provide for the concerns of the parties and the public. The agreement contains within it adequate mechanisms for insuring the just distribution of funds, including oversight authority and the obligation to make public reports -- and this is subject to the Court's continuing equity power to insure compliance. The Court concludes that the proposed settlement of this difficult and intricate multidistrict litigation is fair, adequate and reasonable.

IT IS THEREFORE ORDERED that the final settlement agreement, with the modifications noted herein, shall be approved. The Court shall execute separately the necessary orders of disbursement.

At Wichita, Kansas, this 7th day of July, 1986.

United States District Judge

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

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United States Senate
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510

July 25, 1986

The Honorable Pete V. Domenici
Chairman
Committee on the Budget
United States Senate
Washington, D.C. 20510

The Honorable Lawton Chiles
Ranking Minority Member
Committee on the Budget
United States Senate
Washington, D.C. 20510

Dear Pete and Lawton:

Enclosed is proposed legislation and accompanying report language required by S.Con.Res. 120, the Concurrent Resolution on the Budget for fiscal year 1987. The resolution requires the Committee on Environment and Public Works to achieve savings of $7 billion in budget authority and $3.1 billion in outlays in its programs over the next three fiscal years. Reconciliation instructions assumed that savings would be derived from a combination of reductions in budget authority and outlays from the Federal-Aid Highway program and adoption of $100 million in user fees.

The Committee has taken extraordinary steps to comply with assigned reconciliation instructions. The Committee voted to levy user fees through the Environmental Protection Agency and to increase the fees imposed by the Nuclear Regulatory Commission. The reported legislation also removes a prohibition in current law to allow liquidation of a portion of the Economic Development Administration loan portfolio as part of the effort to meet budget targets. We further agreed to achieve substantial savings in the Federal-Aid Highway program and increase fees collected through the Nuclear Regulatory Commisssion.

The Committee voted to report S. 2405 the Federal-Aid Highway Act of 1986 on July 23, 1986. This measure achieves savings in budget authority of $1.3 billion beyond the level contained in reconciliation instructions and approximates the assigned level in outlays. Contrasted with the Congressional

Budget Office current services baseline projection, this measure represents a savings of $8.1 billion in budget authority and $2.6 billion in outlays over the next three fiscal years.

The Committee agreed to several proposals to meet the additional required savings in fiscal year 1987. If adopted, the Nuclear Regulatory Commission is directed to collect an additional 5% of its annual appropriation or $20 million in user fees above the current level of $132 million or 33% of its budget. The Environmental Protection Agency is directed to collect approximately $20 million dollars in fees applied to Federal registration and permit programs. Proposed legislation specifies that the revenues raised will be returned to the Agency to support its programs. The Economic Development Administration is directed to sell $50 million in defaulted loans.

The Committee has made every effort to comply with reconciliation instructions. We look forward to working with you to see that the enclosed proposals are enacted to further reduce deficit spending.

Sincerely,

Lloyd

Lloyd Bentsen
Ranking Minority Member

Robert T. Stafford
Chairman

FEES OF THE ENVIRONMENTAL PROTECTION AGENCY

As a part of the 1987 budget process the Environmental Protection Agency prepared a proposal to raise off-setting receipts by charging fees for various services and regulatory activities conducted by the Agency. The President's 1987 budget recommended fees in three areas: pesticide registrations; pre-manufacturing notice review under the Toxic Substances Control Act; and ocean disposal permits. The total amount of the EPA fees proposed in the President's budget was $21 million.

The Administrator of the Environmental Protection Agency has created a task force to look at fees across all of the programs administered by the Agency. In addition to the three items listed above, the task force identified one other fee that would be available in the 1987 fiscal year -- that is a fee imposed by the Office of Research and Development for various quality assurance and quality control services that they provide for the private sector.

The Committee is reporting language which authorizes EPA to assess and collect fees and charges in these four areas for fiscal years 1987, 1988 and 1989. The amount of the fees collected in each of the next three fiscal years is estimated to be $20 million annually. This amount is not a cap on the total fees that the Agency can collect and is in addition to authority that the Agency has under other statutes to collect fees and assess charges.

The task force identified seven other possible areas where fees might be appropriate. The Administrator has determined that each of these areas should be studied in-depth. A report on each of these items and on other possibilities is expected in late 1987. These areas include: certification of air emission standards for mobile sources; corporate average fuel economy tests; emissions equipment on luxury automobiles; processing petitions for exemptions and variances under various statutes. The combined total revenue from these seven sources is estimated to be $15 million per year.

The task force also looked at charging fees for various permit programs (NPDES permits, RCRA permits) that are available for delegation to the states. No recommendation was made until further study, but the states have registered strong opposition to fees that would be preemptive in these areas, since many states already use permit fees to support their own programs. The legislation reported by the Committee requires EPA to prepare a report on the implementation of the fee authority granted here and to consider other fees and charges. A draft of that report is to be circulated to state and local government officials for their review and the final report transmitted to the Congress is to include a summary of the comments made by these state and local officials.

One problem noted by the task force is that under current law any fee raised by the Agency would be deposited in the general fund and would not be available to directly support Agency programs. The language reported by the Committee would provide that all revenues received would be placed in a special fund within the U.S. Treasury to be available for appropriation to support the programmatic activities for which the fee was levied.

FEES OF THE NUCLEAR REGULATORY COMMISSION

Summary

Section 2 authorizes the Nuclear Regulatory Commission to assess and collect annual charges from its licensees on a fiscal year basis for fiscal years 1987, 1988, and 1989, for costs incurred by the Commission with respect to such licensees, if the Commission can demonstrate that -- (1) the fee to be assessed a given licensee is reasonably related to the regulatory service provided by the Commission to the licensee from whom the Commission proposes to collect the fee; and (2) the fee fairly reflects the actual cost to the Commission of providing such service to each such individual licensee.

The fees collected pursuant to this provision may not, when added to other amounts collected by the Commission pursuant to other provisions of law, exceed 38 percent of the funds appropriated to the Commission each such fiscal year.

Finally, this section provides that the amount of fees to be assessed shall be established by rule, after reasonable opportunity for notice and comment by all interested persons.

Discussion

Section 7601 of Public Law 99-272 (42 U.S.C. 2213), enacted into law on April 7, 1986, authorizes the Commission to assess and collect annual charges from its licensees, on a fiscal year basis, in an amount up to 33 percent of the annual costs incurred by the Commission, provided that the Commission can demonstrate that the charges assessed are reasonably related to the regulatory service provided by the Commission and fairly reflect the cost to the Commission of providing such service. Section 7601 further provides that the Commission shall submit a report to Congress evaluating the feasibility and necessity of establishing a system for the assessment and collection of annual charges. Finally, section 7601 provides that any assesments imposed pursuant to this provision shall be established by rule.

On July 1, 1986, the Commission published proposed regulations to implement section 7601 (51 Fed. Reg. 24078). On July 7, 1986, the Commission submitted to the Committee on Environment and Public Works a "Report on the Assessment and Collection of Annual Charges", as required by subsection (a) of section 7601.

In light of the information contained in the report submitted by the Commission to this Committee, and in view of the regulations that the Commission has proposed to adopt to implement section 7601 of Public Law 99-272, further clarification and guidance appears to be necessary, to ensure that the Commission properly carries out the intent of section 7601. Accordingly, section 2, which amends section 7601 of Public Law 99-272, provides this further clarification of the scope and intent of the Commission's authority to collect annual fees. In addition, this provision increases the maximum amount of fees that the Commission is authorized to assess, from the current limit of 33% to 38%.

The approach that the Commission has proposed to take in implementing section 7601, as set forth in the proposed rule published on July 1, 1986, does not meet this standard. In fact, the Commission, in proposing a uniform annual assessment for all nuclear power reactors -- regardless of the variance in the regulatory service provided each individual licensee and the corresponding variance in the cost of providing such service -- has virtually disregarded the directive contained in section 7601. Similarly, the approach that the Commission has proposed for the Commission's large materials licensees suffers from the same legal infirmity. And finally, the Commission has excluded a large number of licensees from consideration, citing "the administration costs for administering such a collection program".

Section 2 authorizes, but does not direct, the Commission to collect 38% of its annual budget from fees on Commission licensees. The report provided to the Committee by the Commission, indicates that the Commission should be able to collect the full amount authorized under section 2, and do so consistent with the standards and procedures established in section 2. But this provision does not authorize the Commission to collect any fees if the Commission is unable to demonstrate that -- (1) the fee to be assessed a given licensee is reasonably related to the regulatory service provided by the Commission to the licensee from whom the Commission proposes to collect the fee; and (2) the fee fairly reflects the actual cost to the Commission of providing such service to each such individual licensee.

Section 2 requires the Commission to demonstrate on a licensee-specific basis that the fee to be assessed is reasonably related to the actual cost of the regulatory service provided. Thus, for example, where the Commission devotes substantial resources to a given licensee -- such as a "problem plant" or a plant applying for an operating license -- the fee assessed should reflect such actual costs. On the other hand, where the Commission devotes lesser resources to a given licensee, that, too, should be reflected in the fee collected from that licensee. As expressed in the Statement of Managers accompanying section 7601, because certain Commission licensees, such as uranium producers and others, have limited ability to pass through the costs of these charges to the ultimate consumer, the Commission should take this factor into account in determining whether to modify the Commission's current fee schedule for such licensees.

Section 2 establishes the factors that the Commission may consider in assessing fees pursuant to this provision. The section does not authorize the Commission to assess fees on some licensees and not others based upon the administrative costs to the Commission of collecting such fees. If further information from the Commission justifies it, appropriate modification to the legislation can be made to ensure that the administrative costs of the Commission's fee program remain within reasonable bounds.

Finally, section 2 provides that the Commission shall conduct a notice and comment rulemaking to establish the amount of any fees to be assessed, with reasonable opportunity for notice and comment by all interested persons. The Committee expects the Commission, at a minimum, to allow for at least 45 days for the public to comment on any proposed rule.

SALES OF NOTES

The Committee has reported legislation which authorizes the Secretary of Commerce to sell defaulted loans which have been accumulated in the Revolving Fund of the Economic Development Administration. The Secretary is instructed by this language to sell notes sufficient to achieve budget savings of $50 million in fiscal year 1987.

Under current law there is a prohibition on the sale of such notes. This legislation would explicitly overturn that current law prohibition. In February, 1985 the Department of Commerce transmitted to the Congress a legislative proposal to the same effect. The justification for that proposal which accompanied the draft bill is reprinted below.

HIGHWAY PROGRAMS

On July 23, 1986, the Committee voted to report S. 2405, the Federal-Aid Highway Act of 1986. This measure is a comprehensive reauthorization of Federal-Aid Highway programs through fiscal year 1990.

This program is funded entirely through highway user fees collected into the Highway Trust Fund, and must be expended on highway projects. When authorization, or contract authority, is created for this program out of the Highway Trust Fund, the funds are apportioned or allocated to the States. The States can then immediately obligate these funds without any further appropriations process.

The argument has been put forward that the highway program is a dedicated user fee program financed from a trust fund that has a $9 billion balance and should, therefore, be immune from any efforts to control Federal spending. The Highway Trust Fund is, however, part of the unified budget and the level of highway spending does have an impact on the Federal budget.

In recognition of the need to control spending as part of Federal deficit reduction efforts, the Committee agreed to restrain spending from the Highway Trust Fund. Accordingly, the Committee adopted an obligation limitation of $12.350 billion in each fiscal year 1987 through 1990. This is a further reduction from levels contained in P.L. 99-272, the Consolidated Omnibus Budget Reconciliation Act of 1985, yielding a net savings of $3 billion in fiscal years 1987 and 1988. The obigation limitation determines the amount that States can obligate from the fund in any given year and therefore controls outlays from the Highway Trust Fund.

The following chart shows total spending levels contained in S. 2405 for fiscal years 1987 through 1989.

S. 2405 as Reported
(in millions of dollars)

	FY87	FY88	FY89
BA	13,082	13,082	13,082
OT	13,740	13,170	13,280

STATEMENT OF PURPOSE AND NEED

The Department of Commerce and Related Agencies Appropriation Act, 1985 (Pub. L. No. 98-411, 98 Stat. 1545) prohibits the Secretary of Commerce from using appropriations to

> "sell to private interests, except with the consent of the borrower, or contract with private interests to sell or administer, any loans made under the Public Works and Economic Development Act of 1965 or any loans made under section 254 of the Trade Act of 1974."

The Department believes that this limitation hampers the ability of the Secretary to take actions which are in the best interest of the United States. Accordingly, we recommend that the Congress repeal this limitation.

Title II of the Public Works and Economic Development Act of 1965 (42 U.S.C. §3141) and section 254 of the Trade Act of 1974 (19 U.S.C. §2344) authorize the Secretary of Commerce to extend financial assistance in the form of direct loans and guarantees of loans made by private lenders.[1] As of September 30, 1984, the Economic Development Administration (EDA) had business development loans outstanding in the amount of $521 million and public works loans outstanding in the amount of $249 million (including loans under the Community Emergency Drought Relief Act of 1977 (42 U.S.C. §5184)). In addition, EDA had entered into guarantees with a total contingent liability of $380 million.[2] Despite a series of management reforms designed to improve the condition of the portfolio begun by EDA in FY 1982, the delinquency rate of the business development portfolio has remained too high -- a troublesome 55% as of September 30, 1984.[3]

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[1] Until September 20, 1981, the Secretary of Commerce had delegated authority to extend financial assistance under these acts to the Assistant Secretary for Economic Development. On September 20, 1981, the Secretary re-delegated his authority under Section 254 of the Trade Act of 1974 to the Under Secretary for International Trade.

[2] With respect to the section 254 program since it was transferred to the International Trade Administration, as of September 30, 1984, ITA had $4.9 million in direct loans outstanding and $19.8 million in contingent liability. The Government's liability under these guarantees is contingent in that no Federal payment is required unless the borrower defaults and the lender demands payment under the guarantee.

In order to manage a portfolio the size of EDA's and to protect the Government's interest, EDA needs flexibility to take necessary actions to address widely varying circumstances. In enacting the Public Works and Economic Development Act (PWEDA), Congress recognized this need by providing the Secretary of Commerce with broad powers under section 701 (42 U.S.C. §3211) to

(1) deal with, complete, renovate, insure, rent or sell property conveyed or acquired under the Act (section 701(6));

(2) pursue to final collection all claims against third parties assigned to the Secretary in connection with loans (section 701(7));

(3) acquire property deemed necessary to conduct activities under sections 201, 202, 301, 403 and 503 of the Act (section 701(8)); and

(4) take any and all actions necessary or desirable in making, purchasing, servicing, compromising, modifying, liquidating or otherwise administratively dealing with or realizing on loans made under the Act (section 701(9)).

In addition to these powers, section 701(4) of the Act also authorizes the Secretary to

> "sell at public or private sale ... in his discretion and upon such terms and conditions and for such consideration as he shall determine to be reasonable, any evidence of debt... assigned to him or held by him in connection with loans made... under this Act, and collect or compromise all obligations assigned to him or held by him in connection with such loans...." (Similar authority is provided under section 257 of the Trade Act of 1974, 19 U.S.C. §2347(a)(2))

During fiscal years 1983, 1984 and 1985, Congress has limited the Secretary's broad authority under section 701 by including a prohibition in the Appropriations Act against the use of funds to sell any loans to private interests except with the consent of the

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3. The delinquency rate on the public works loan portfolio was 9% as of September 30, 1984. These delinquency rates do not take into account amounts which have been written off over the years as uncollectible. As of September 30, 1984, EDA has written off $386 million worth of non-performing loans.

borrower. Congress added this provision to preclude EDA from selling loans on the basis of a public offering as it had in the latter half of 1982 when it sold 12 loans to private interests. Because individual borrowers are reluctant to consent to a sale of their loans unless they know the identity of the purchaser beforehand, this limitation has effectively eliminated EDA's authority to conduct a public sale of these loans.

With the business development portfolio experiencing a delinquency rate of 55%, the Department believes it is essential for the Secretary to have available the full range of authorities provided in PWEDA and the Trade Act of 1974. While the 1982 public offering did not generate as many bids as anticipated due generally to the low quality of the loans offered, the Department believes it demonstrated the feasibility of conducting a sale of this type. The sale was also beneficial in that it increased the awareness of other borrowers of EDA's renewed emphasis on debt collection.

The Department believes the ability to consider additional sales is clearly in the Government's interest. First, a bulk disposition of a portion of the portfolio reduces the administrative burden of loan servicing and monitoring by shrinking the size of the portfolio. With a smaller portfolio, the Department can use its resources to work with other borrowers more intensively and assist them in meeting their obligations to the Government.

Second, a bulk disposition enables the Department to avoid the delays and expenses of conventional liquidations and other collection procedures. In many cases, the only alternative to a public sale is conventional liquidation.[4] In conventional liquidations, the Government's recovery of funds is stretched out over time as the Government must undertake formal proceedings to acquire and then sell project assets. A bulk disposition of the loan paper, on the other hand, gives the Government proceeds from the sale immediately upon completion of the sale.

The Department will continue to use the full range of powers provided to the Secretary under PWEDA and the Trade Act of 1974. Whenever possible, we will work with delinquent borrowers to develop reasonable workout plans which retain the economic development benefits of the projects. When borrowers are unable to meet their obligations to the United States, the Department must act to protect the Government's interest. Enactment of the proposal will restore to the Secretary an important power so that the Department can use the most efficient means to ensure maximum protection of the Government's interest.

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4. Forty-three percent of the loans in the business development portfolio are already in some stage of liquidation.

CBO COST ESTIMATE

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

Rudolph G. Penner
Director

July 30, 1986

Honorable Robert T. Stafford
Chairman
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Congressional Budget Office has prepared the attached estimate of the budget impact of the reconciliation recommendations ordered reported by the Senate Committee on Environment and Public Works on July 29, 1986. Table 1 summarizes the budgetary effects relative to current law. Table 2 summarizes the effects relative to the budget resolution baseline, as adjusted for enacted legislation.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

Rudolph G. Penner

cc: Honorable Lloyd Bentsen
Ranking Minority Member

CONGRESSIONAL BUDGET OFFICE

COST ESTIMATE

July 30, 1986

1. BILL NUMBER: Not yet assigned.

2. BILL TITLE: Committee recommendations for the Budget Reconciliation Act of 1986

3. BILL STATUS:

   Committee print adopted by the Senate Committee on Environment and Public Works, July 29, 1986.

4. BILL PURPOSE:

   The bill contains four provisions that are recommended for inclusion in the Budget Reconciliation Act of 1986: (1) fees of the Environmental Protection Agency; (2) Nuclear Regulatory Commission charges; (3) sale of defaulted notes held in the Economic Development Administration's revolving fund; and (4) authorization for federal highway programs.

5. ESTIMATED COST TO THE FEDERAL GOVERNMENT:

TABLE 1: ESTIMATED BUDGET IMPACT OF RECONCILIATION PROVISIONS--CHANGE FROM CURRENT LAW (by fiscal year, in millions of dollars)

	1987	1988	1989	1990	1991
DIRECT SPENDING					
EPA Fees					
Estimated Budget Authority	-10	-20	-20	---	---
Estimated Outlays	-10	-20	-20	---	---
Sale of EDA Notes					
Estimated Budget Authority	---	---	---	---	---
Estimated Outlays	-50	27	---	---	---
Highway Programs a/					
Estimated Budget Authority	8,972	8,972	8,972	---	---
Estimated Outlays	-140	-640	1,480	6,580	2,100
AUTHORIZATIONS					
Highway Programs					
Authorization Level	10	10	10	10	10
Estimated Outlays	2	7	8	8	3
REVENUES					
NRC Annual Charges	27	28	24	---	---

TABLE 2: ESTIMATED BUDGET IMPACT OF RECONCILIATION PROVISIONS--CHANGE FROM RESOLUTION BASELINE ADJUSTED FOR ENACTED LEGISLATION (by fiscal year, in millions of dollars)

	1987	1988	1989
DIRECT SPENDING			
EPA Fees			
Estimated Budget Authority	-10	-20	-20
Estimated Outlays	-10	-20	-20
Sale of EDA Notes			
Estimated Budget Authority	---	---	---
Estimated Outlays	-50	27	---
Highway Programs			
Estimated Budget Authority	-2,240	-2,700	-3,180
Estimated Outlays	-190	-910	-1,490
Total - Direct Spending			
Estimated Budget Authority	-2,250	-2,720	-3,200
Estimated Outlays	-250	-903	-1,510
AUTHORIZATIONS			
Highway Programs			
Authorization Level	---	---	---
Estimated Outlays	---	---	---
REVENUES			
NRC Annual Charges	27	28	24

The budget impact of this bill falls within budget functions 270, 300, 400, and 450. Federal revenues are also affected.

Basis of Estimate:

Section 1 of the bill authorizes the Environmental Protection Agency to assess and collect fees amounting to $20 million annually for services and activities carried out pursuant to the statutes administered by the agency. Collections in 1987 would be lower, because it is likely to take several months to promulgate the necessary regulations.

Section 2 of the bill would authorize the Nuclear Regulatory Commission (NRC) to increase the annual charges for licensees for the fiscal years 1987, 1988, and 1989. The annual charges are to be assessed and collected for costs incurred by the commission and shall not exceed 38 percent of the funds appropriated to the commission for each fiscal year. Under current law, the NRC is authorized to collect annual charges for 33 percent of its costs. CBO estimates that enactment of this bill will result in additional revenues of $27 million in fiscal year 1987, $28 million in fiscal year 1988, and $24 million in fiscal year 1989, assuming funding at baseline levels.

Section 3 requires the Secretary of Commerce to sell defaulted loans of the Economic Development Revolving Fund in such amounts necessary to generate net proceeds of at least $50 million in 1987. The Economic Development Administration (EDA) estimates that loans with face value of about $220 million are in default. Based upon information provided by major investment banks, CBO estimates that these loans can be sold without recourse to the federal government for about 60 percent of their face value. Recent liquidation experience at EDA has resulted in about a 40 percent return on face value. CBO estimates that the same return would be expected on future liquidations and that, barring any sale, all loans currently in default would be liquidated within two years.

Assuming a 60 percent return on face value from the sale without recourse of defaulted loans and a 40 percent return if those loans had been liquidated by EDA, CBO estimates that the sale of defaulted loans with face value of about $130 million would generate net proceeds of $50 million in 1987. The sale of loans is estimated to increase fiscal year 1988 outlays, relative to the CBO baseline, by about $27 million. This estimate also assumes that the language of Section 3 is sufficient to remove current statutory prohibitions concerning the sale of EDA loans and the release of financial information on borrowers to potential purchasers.

Section 4 of the bill authorizes appropriations for federal-aid highways and highway safety construction programs of $13.082 billion annually in fiscal years 1987 through 1989. Based on information from the Committee staff, CBO assumes that the funding levels in this bill reflect the specific authorizations included in S. 2405, the Federal-Aid Highway Act of 1986, as ordered reported by the Committee. Therefore, this estimate assumes that the total amount authorized includes contract authority of $13.072 billion in each of fiscal years 1987 through 1989 for federal-aid highways and highway-related safety grants, and an authorization of $10 million annually for highway safety research and development.

Outlays for federal-aid highways are controlled primarily by a ceiling on obligations. This bill establishes annual ceilings of $12.35 billion for fiscal years 1987 through 1989. In estimating the effect of this legislation on outlays, the obligation ceilings are compared to those established by the 1985 Reconciliation Act (COBRA)--$13.525 billion for 1987 and $14.1 billion for 1988. For comparison with the baseline, a 1989 baseline obligation ceiling of $14.5 billion is assumed, the 1988 COBRA ceiling adjusted for inflation. The level of obligations under this bill for the minimum allocation program, which is exempt from the ceiling, is assumed to be that reflected in CBO's baseline.

6. ESTIMATED COST TO STATE AND LOCAL GOVERNMENTS:

The annual charges for the NRC authorized by this bill would affect electric utility rates, and thus indirectly increase the utility costs of state and local governments. This increase is not expected to be significant.

7. ESTIMATE COMPARISON: None.

8. PREVIOUS CBO ESTIMATE: None.

9. ESTIMATE PREPARED BY:

Deb Reis, Pete Fontaine, Paul DiNardo, and Marge Miller (226-2860)

10. ESTIMATE APPROVED BY:

C.G. Nuckols
for James L. Blum
Assistant Director
for Budget Analysis

MINORITY VIEWS OF SENATOR FRANK R. LAUTENBERG

The Concurrent Budget Resolution for FY 1987 required the Committee on Environment and Public Works to make savings through the reconciliation process. The Budget Resolution called for achieving part of these savings through $100 million of user fees. The Committee Report includes $20 million in EPA fees, with $4 million of these fees to generated from ocean disposal permits. I have reservations about these fees.

I have sponsored several bills aimed at bringing an end to ocean disposal of wastes. However, in the short term, municipalities in New Jersey still depend on ocean disposal for sewage sludge. The proposed permitting fees will increase the costs to municipalities seeking permitting for ocean disposal of sewage sludge. This increased cost comes at a time when municipalities are already experiencing a cutback in funds from federally assisted programs which have traditionally helped our cities and towns provide for basic services. For this reason, I oppose these proposed ocean disposal permitting fees. But should such a fee be adopted, it should be capped at a level that takes account of these severe burdens on our municipalities.

The ocean disposal fees, unlike the other EPA fees in the Committee Report, have a disproportionate effect on states, such as New Jersey, that still rely on ocean disposal of sewage sludge. If we are going to pursue EPA fees, we should select agency programs that are national in scope, and do not unfairly focus on particular states and regions.

Frank R. Lautenberg

COMMITTEE ON FINANCE

Titles VI and VI-A

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United States Senate
COMMITTEE ON FINANCE
WASHINGTON, DC 20510

July 30, 1986

The Honorable Pete V. Domenici
Chairman
Committee on the Budget
United States Senate
Washington, D.C. 20510

Dear Pete:

We hereby submit the statutory language implementing the recommendations of the Committee on Finance to meet its reconciliation instructions under S. Con. Res. 120, the concurrent resolution on the budget for fiscal year 1987. Also enclosed are materials which explain these provisions.

These statutory provisions will reduce outlays for programs within the jurisdiction of the Committee on Finance by $3.2 billion over fiscal years 1987-1989. In addition, the revenue provisions will increase Federal receipts by $10.1 billion over the same period.

Sincerely,

Russell Long
RUSSELL B. LONG
Ranking Minority Member

Bob Packwood
BOB PACKWOOD
Chairman

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TITLE VI: OUTLAY PROVISIONS

A. Medicare Provisions

1. Payments for Inpatient Hospital Services

Current law.—The Social Security Amendments of 1983 (P.L. 98-21) authorized the Secretary of Health and Human Services (HHS) to determine the rate of increase in the prospective payment system (PPS) rates for FY 1986 and thereafter, taking into account the recommendations of the Prospective Payment Assessment Commission (ProPAC). The Deficit Reduction Act of 1984, P.L. 98-369 (DEFRA), limited the FY 1986 rate of increase to be determined by the Secretary to the rate of increase in the hospital marketbasket plus one-quarter of one percentage point. HHS issued final rules on September 3, 1985 freezing the PPS payment rates for FY 1986. However, these rules were not implemented because of the enactment of the Emergency Extension Act of 1985 (P.L. 99-107, as amended by P.L. 99-201), which provided that from October 1, 1985 through March 14, 1986, the FY 1986 PPS rates would be frozen at FY 1985 levels.

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) provided that the FY 1986 rate freeze continue until May 1, 1986, when the PPS rates would be increased one-half percent for the remainder of the year. In addition, for FY 1987 and FY 1988, it provided that the Secretary could determine any change in the PPS payment rates, taking into account the recommendations of the ProPAC, not to exceed the marketbasket index change. The rate of increase for PPS-exempt hospitals was $\frac{5}{24}$ of one percent, effective for hospital cost reporting periods beginning October 1, 1985, but before October 1, 1986. The Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99-177) reduced the FY 1986 Medicare payments to hospitals by one percent beginning March 1, 1986.

In proposed rules issued June 3, 1986, HHS provided for an increase of 0.5 percent in the FY 1987 PPS rates and in the target amounts per discharge for PPS-exempt hospitals. In its July 2, 1986 report to HCFA, ProPAC recommended a 2.2 percent rate of increase in FY 1987 PPS rates, a rate of increase for children's hospitals of 3.2 percent, and a rate of increase for other PPS-exempt hospitals and units of 3.5 percent.

PPS hospitals are paid, in part, on the basis of regional and national standardized amounts per discharge. Separate urban and rural standardized amounts are calculated for each of the nine census regions and for the nation. These standardized amounts represent the urban or rural operating cost per discharge averaged across all hospitals in the region (or nation). This results in amounts that represent the operating cost per discharge for the average hospital. Additional amounts are paid to PPS hospitals for "outliers"—atypical cases which have extraordinarily high costs or involve extraordinarily long hospital stays compared to most patients classified in the same DRG. The law requires that total outlier payments to all hospitals represent no less than 5 percent and no more than 6 percent of the total estimated Medicare prospective payments based on the DRG payment rates for the fiscal year.

Rural hospitals may apply for designation as rural referral centers. In order to qualify, hospitals must meet criteria based on bed size or national or regional criteria based on case mix, admission volume, or patient referrals. Hospitals meeting these criteria are paid prospective payments based on the applicable urban payment rates, rather than the rural rates, as adjusted by the hospital's area wage index.

The provision would provide an increase in the payment rates for PPS hospitals and in the target amounts for PPS-exempt hospitals in FY 1987 of 1.5 percent.

Although the Committee is recommending a 1.5 percent increase for both PPS and PPS-exempt hospitals, the Committee understands there are presently two distinct Medicare hospital payment systems in operation—hospitals paid under PPS and hospitals paid under the TEFRA per case cost limits. It is the Committee's view that the criteria utilized to develop an update factor for PPS-exempt hospitals should be specific to the operation of these facilities. Therefore, the Committee recommends that the Secretary consider the ProPAC recommendations regarding a separate update factor for PPS-exempt hospitals and urges the Secretary for FY 1988 and for subsequent fiscal years to utilize those criteria that are specific to the operation of PPS-exempt hospitals in developing an update factor for those facilities.

The current formula used to calculate the average standardized amounts for urban and for rural hospitals under PPS would be changed to be based on the number of patients discharged rather than the number of hospitals. This would result in amounts that represent the operating cost per discharge for the average patient as opposed to the average hospital. The effect of this provision would be to shift payments from urban hospitals to rural hospitals.

Medicare law would be amended so that the total amount of payments for outliers to sole community hospitals, with an average occupancy of 50 beds or less, and to small rural hospitals would be required to be not less than 5 percent nor more than 6 percent of the total payments based on DRG prospective payment rates projected or estimated to be made to such hospitals in a given year.

The Prospective Payment Assessment Commission (ProPAC) would be required to include in its annual report an assessment of whether the outlier thresholds established by the Secretary each year (both the generally applicable thresholds and the new thresholds for small rural hospitals) are being set at the appropriate levels to insure that between 5 and 6 percent of the PPS payments are made for outliers.

Hospitals designated as rural referral centers as of the date of enactment of this Act shall retain that designation for cost reporting periods beginning on or after October 1, 1986, and before October 1, 1989.

Effective date.—October 1, 1986.

2. Payments for Hospital Capital-Related Costs

Current law.—The Social Security Amendments of 1983 (P.L. 98-21) established a prospective payment system (PPS) for making payments to hospitals for the operating costs of inpatient services provided to Medicare beneficiaries. Payments for operating costs are made on the basis of fixed rates per discharge. Hospital capital-related costs of inpatient services (including depreciation, leases and rentals, interest, and a return on equity for proprietary hospitals) are excluded from PPS and are reimbursed on a reasonable cost basis. This exclusion was to expire on October 1, 1986, but enactment of the Urgent Supplemental Appropriations Act (P.L. 99-349) extended the exclusion until October 1, 1987.

In addition, under prior law, if Congress did not enact legislation by October 1, 1986 to include capital-related costs under PPS, Medicare payment for capital costs would be prohibited unless a State has a capital expenditure review agreement with the Secretary (under section 1122 of the Social Security Act) and the State has recommended approval of the specific capital expenditure. P.L. 99-349 extended the deadline for congressional action to October 1, 1987.

Explanation of provision.—The provision would reduce reimbursements to PPS hospitals for capital costs of inpatient services, otherwise payable under current law, by 3 percent in FY 1987, 5 percent in FY 1988 and 6 percent in FY 1989.

A hospital which is a sole community hospital pursuant to section 1886(d)(5)(C)(ii) of the Social Security Act would be exempt from the reductions. Under current law, a hospital which is paid as a sole community provider voluntarily may relinquish such status, and be paid in the same manner as other prospective payment system (PPS) hospitals. This provision would continue to apply, but any hospital which relinquished its status as a sole community provider prior to the date of enactment of this capital provision could reapply and requalify for sole community provider status.

It is the intent of the Committee to consider the issue of payment for capital-related costs next year, and to develop a capital payment proposal which moves to a prospective payment system, but also continues cost-based reimbursement for capital-related financial obligations incurred, or enforceable agreements entered into, prior to January 1, 1986. Such a proposal would also include a requirement that a payment adjustment for new capital (those capital-related costs not "grandfathered" under cost-based reimbursement) would be included for hospitals which serve a disproportionate share of low-income patients (if such an adjustment for disproportionate share is included in law for operating costs).

Effective date.—Hospital cost reporting periods beginning on or after October 1, 1986.

3. Medicare as Secondary Payer; Coverage Requirements for Certain Other Payers

Current law.—The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) required employers to offer their employees aged 65 through 69 the same group health plan offered to their employees under age 65. DEFRA extended the provision to beneficiaries covered under a working spouse's employer-based health plan when that spouse is under age 65. COBRA extended this provision to the working aged and spouses over age 69. When the beneficiary elects such coverage, Medicare becomes the secondary payer. The beneficiary retains the option to be covered only by Medicare.

Explanation of provision.—The provision would make Medicare the secondary payer for all beneficiaries (including the disabled and those who buy into Medicare) who receive employment-based health benefits as a current employee (or family member) of an employer with 20 or more employees, and would explicitly include an employer, anyone associated with the employer in a business relationship (such as an agent or contractor) who is covered by the employer's health plan, and former employees who have not reached age 65. The provision would not otherwise enlarge the obligations of employers under current law. The provision also states explicitly that these group health plan requirements (and similar ones for end stage renal disease (ESRD) and for workers' compensation and liability and related insurance) would be enforceable by private action or by the Federal Government (with double the damages payable), and would impose an excise tax equal to 25 percent of group health plan expenses if the requirements were not met. Federal Medicaid payments to a State would be reduced by 25 percent of group health plan expenses of a State (or State or local governmental entity) that did not comply. Enforcement through the Equal Employment Opportunity Commission (EEOC) would be eliminated.

Finally, the provision would provide uniform rules as to the benefits Medicare pays when other payers are primary but do not pay the full charge. In particular, payment under workers' compensation or liability and related insurance is not now counted toward the Medicare deductible, but would be under this provision.

It is the Committee's intent that the Department of Health and Human Services would consult with the Departments of Treasury and Labor in implementing this provision.

Effective date.—October 1, 1986.

4. Payments for Physicians' Services

Current law.—Payments are made to physicians on the basis of reasonable charges. The reasonable charge for a service is the lowest of the actual charge, the physician's customary charge for the service or the prevailing charge for the service in the community.

DEFRA froze physician fees for the 15 month period July 1, 1984 through September 30, 1985. The Emergency Extension Act (P.L. 99-107), as amended, and COBRA extended this freeze through April 30, 1986 for participating physicians and December 31, 1986 for nonparticipating physicians.

Current law permits the Secretary certain flexibility in determining reasonable charges. Regulations allow the use of "other factors that may be found necessary and appropriate with respect to a specific item or service . . . in judging whether the charge is inherently reasonable." COBRA requires the Secretary to promulgate regulations which specify explicitly the criteria of "inherent reasonableness." HHS issued proposed regulations on February 18, 1986, summarizing the conditions under which the Secretary could use the "inherent reasonableness" authority to establish either special methodologies or specific dollar limits when fees paid under current methods are determined to be inherently unreasonable.

Explanation of provision.—The provision would identify instances where inherent reasonableness limitations could be applied though use of the limitations would not be limited to the identified instances. If the Secretary applies the inherent reasonableness authority, the provision specifies the factors that would be considered in determining the inherent reasonableness of charges. The identified factors would include cases where: prevailing charges are significantly different from those in comparable localities; Medicare and Medicaid are the main sources of payment; the marketplace for the service is not truly competitive because of the limited number of physicians performing the service; there have been increases in charges not explained by inflation; charges do not reflect changing technology or reduction in acquisition or production costs, or the prevailing charges are substantially higher than payments made by other purchasers. The Secretary must review the ten most costly procedures with respect to the aggregate cost to Medicare.

The provision would provide that regional differences in fees would be taken into account unless there is substantial economic justification for a uniform national fee or payment limit. The Secretary would be required to use the rule-making process in any case where he or she proposes to establish a new reasonable charge, or a methodology for a new reasonable charge, based on inherent reasonableness determinations. The notice must include the impact of the change or methodology proposed to be established with respect to changes in the accessibility of, and beneficiary liability for, the service. The provision would require a public comment period and comments by the Physician Payment Review Commission. The provision would require final regulations to explain the factors and the data the Secretary considered in making the final determinations.

The provision would require the Secretary both to develop an index for adjusting relative value scale (RVS) payment levels to reflect justifiable geographic cost differences and to examine a possible adjustment to encourage physicians to locate in medically underserved areas. The provision also would change the date by which the Secretary is to develop an RVS to July 1, 1989 to allow for completion of research currently being funded by HCFA. The provision would require the consolidation of the payment methodology under HCFA's Common Procedures Coding System (HCPCS) and mandate its use for hospital outpatient services.

Effective date.—Applies to final regulations issued after July 1, 1986.

5. Medicare Economic Index for Physicians' Services

Current law.—Prior to 1984, the increase in the prevailing charge level was updated annually. This update has been limited by the Medicare economic index (MEI). Expressed as a maximum allowable percentage increase, this index reflects changes in physicians' operating expenses and earnings levels.

Explanation of provision.—The provision would modify the MEI to account for a historical overstatement of housing costs. A "rental equivalence" component would be substituted for the housing "home ownership component" of the Consumer Price Index (CPI). This proposed change is patterned after a comparable change made in the CPI in 1983. The provision would adjust the MEI retroactively to 1973, the base year for the MEI.

The provision would provide that the adjustment of the MEI would be made in two stages with one-half of the adjustment becoming effective January 1, 1987, and the other half January 1, 1988. The provision would require the Secretary to utilize the rulemaking process for proposed changes in the methodology, basis, or elements of the MEI.

Effective date.—January 1, 1987.

6. End-stage Renal Disease Payments

Current law.—Under the end-stage renal disease (ESRD) program, patients with kidney failure can receive dialysis treatments and physician care. For these services, Medicare will pay:

(a) to a dialysis facility, a so-called "composite rate" for routine kidney dialysis performed on an outpatient basis; and

(b) to a renal physician, a predetermined amount per patient per month for physician services. This amount is called the "monthly capitation payment" (MCP).

Explanation of provision.—The provision would modify the physician payment rates as set forth in the notice in the Federal Register of July 2, 1986. The current methodology used to compute the MCP reflects an assumption that physicians care for 10 patients who dialyze at home for every 7 patients that are dialyzed in a facility during a given period of time. This is a ratio of 10:7.

Based on a recent General Accounting Office study of actual physician services furnished, that ratio would be reduced from 10:7 to about 4:1. As a result of correcting the ratio, the average MCP rate would be reduced from approximately $187 to $173 per patient per month.

In addition, this provision would reduce the current renal facility rates by $1.00 rather than by $11.00 as proposed by the Administration. The provision would require an independent study of the appropriateness of the facility rate to be completed within one year by the General Accounting Office.

Effective date.—August 1, 1986 for physicians payments; and for facilities October 1, 1986 through September 30, 1988.

7. Payments for Ambulatory Surgery

Current law.—The Omnibus Reconciliation Act of 1980 (P.L. 96-499) authorized payments for facility services furnished in connection with ambulatory surgical procedures specified by the Secretary of Health and Human Services (HHS). Payments are made on the basis of prospectively set known rates as the "standard overhead amounts."

HHS issued final regulations and an accompanying notice, August 5, 1982, identifying four groups of surgical procedures and the payment amount for each group. The payment amounts and the list of procedures have not been updated. The rates do not include payments for physicians' services, prosthetic devices, or laboratory services.

No beneficiary cost-sharing is required in connection with services provided in ambulatory surgical centers.

Explanation of provision.—The provision would extend the ambulatory surgical center (ASC) prospective payment approach to hospital outpatient department (OPD) surgery. For all surgeries approved for performance in an ASC, Medicare-participating hospitals would receive the lesser of (a) Medicare's reasonable costs for surgery minus 20 percent of the actual charge, or (b) Medicare's prospective rate for ASC's minus 20 percent of that rate. The provision would be effective for hospital accounting years that begin on or after July 1, 1987.

The provision would require the Secretary, no later than July 1, 1987, to update the 1982 ASC rates that are currently in use. Thereafter, the Secretary annually would review the ASC and OPD rates and revise the list of procedures which are approved for ASC performance and reimbursement.

The provision would impose the standard part B coinsurance (20 percent) and deductible ($75) for ambulatory surgery services.

Utilizing the HCPCS data that will be available after July 1, 1987, the Secretary would be required to: (a) develop packages of pre- and post-operative services for different procedures that are appropriate for application of a prospective payment system, and (b) develop a PPS methodology for all outpatient procedures. The Secretary would be required to report to Congress on these packages and the PPS methodology by January 1, 1991.

For contracts entered into or renewed after January 1, 1987, the Secretary would be required to add to each Utilization and Quality Control Peer Review Organization (PRO) scope of work the requirement that PROs review the medical necessity and quality of surgery in OPD and ASC settings. The percentage of cases to be reviewed, and whether there is to be pre- and post-procedure review, is left to the Secretary's discretion. Payments for the cost of outpatient certified registered nurse anesthetist (CRNA) services and direct medical education would continue to be made as under current law. The Secretary would be required to conduct a two-year study on educational activities in hospital outpatient settings and report back to Congress with recommendations about a proper payment for graduate medical education (GME) related to outpatient hospital services.

Effective date.—July 1, 1987.

8. Payment of Medicare Claims

Current law.—Hospitals, skilled nursing facilities and home health agencies who meet certain requirements may receive Medicare periodic interim payments (PIP) every two weeks, based on estimated annual costs without regard to the submission of individual bills. At the end of the year, a settlement is made so that the provider receives the actual payment amounts for treating Medicare beneficiaries. In proposed fiscal year 1987 regulations for the prospective payment system (PPS), the Department of Health and Human Services proposed to end PIP for most PPS and PPS-exempt hospitals, effective July 1, 1987, except in the event a beneficiary is an inpatient for more than 45 Medicare-covered days.

The Health Care Financing Administration (HCFA) recently issued guidelines requiring each part A intermediary and part B carrier to process at least 95 percent of "clean" Medicare claims within 27 days of receipt. "Clean" Medicare claims are those not requiring development for payment safeguard activities or additional information. The guidelines apply to Medicare claims submitted by beneficiaries, physicians, providers, and suppliers of health care.

Explanation of provision.—The provision would eliminate periodic interim payments for all PPS hospitals. Qualified non-PPS hospitals, skilled nursing facilities, and home health agencies (all of which are paid on the basis of costs) would continue to receive such payments.

The provision also would require each part A intermediary and part B carrier to process and pay at least 95 percent of all "clean" Medicare claims within 24 days of receipt. The 24 day limit would be a ceiling. Providers who received payments during the first half of 1986 for their clean Medicare claims within a shorter time period should not have their payments delayed beyond the claims processing time frames they experienced during the first six months of 1986 in order to meet the requirements of this provision. The committee intends that the 24-day standard be applied without differentiation between electronically transmitted and conventional "paper" claims.

The elimination of PIP for PPS hospitals would be delayed until an intermediary had demonstrated that it had complied with the prompt payment provision for at least three consecutive months. The Committee intends that the Secretary would establish, on a temporary basis, interim payments during any period in which claims processing is suspended. If an intermediary fails to meet the prompt payment criterion for three consecutive months, all the hospitals it serves may choose to be placed on PIP. Once an intermediary has reestablished compliance with the prompt payment rule for three consecutive months, the reinstatement of PIP would be discontinued.

If the carrier fails to pay 95 percent of clean part B claims within 24 days, interest will be assessed on delayed claims for each day beginning with the 25th day (at the usual government prompt payment rate) until the claim is paid. To allow time for carriers to develop new processing systems, the interest requirement would be delayed 6 months and there would be a 15-day grace period (i.e., the penalties would only be applied to claims on or after the 40th day) for one year.

Effective date.—October 1, 1986.

9. Changes in Inpatient Hospital Deductible

Current law.—Medicare's inpatient hospital deductible must, by law, be adjusted each January based on a formula which reflects the average cost of a day of hospital care.

In recent years lengths of stay have been decreasing faster than costs per stay. Total costs now are divided by a smaller denominator; this results in a higher per-day figure. The deductible was $400 in 1985, and is $492 in 1986. The Administration estimates that the deductible will increase by 16 percent to $572 in 1987.

Explanation of provision.—This provision would set the deductible at $520 in 1987. In future years, the annual increase in the deductible would be tied to the annual increase in the average cost of a Medicare hospital discharge instead of the cost of an average day of hospital care.

Effective date.—January 1, 1987.

10. Provider Representation of Beneficiaries on Appeals

Current law.—In 1984, manual instructions prohibited providers (e.g., hospitals and home health agencies) from representing a beneficary in an appeal where a payment had been denied for a service they provided.

Explanation of provision.—The provision would broaden the appeal authority to include provider representation of beneficiaries for all Medicare part A and part B appeals of claims denials. Providers would not be allowed to claim the costs of unsuccessful appeals on the cost report. Beneficiaries would not be responsible for the costs of successful or unsuccessful appeals filed on their behalf.

Effective date.—Enactment.

11. Notice of Hospital Discharge Rights; Discharge Planning

Current law.—Under the Medicare prospective payment system hospitals are reimbursed on a per case basis according to a patient's diagnosis. The payment rates reflect the average cost of providing care for patients in the same diagnostic category. Hospitals and/or physicians determine when it is medically appropriate to discharge a Medicare beneficiary from inpatient care. In February 1986, the Health Care Financing Administration arranged for voluntary distribution to patients through hospitals of a notice of patient rights which includes information concerning financial liability for continued inpatient stay and procedures to appeal a discharge notice.

Beneficiaries who have been in the hospital three days and require additional skilled care are eligible for up to 100 days of care in a Medicare approved skilled nursing facility (SNF). Beneficiaries who must remain at home but still require skilled nursing care on an intermittent basis are eligible for home health services. In May 1986, regulations were issued to require hospitals which participate in Medicare to have a discharge planning program to facilitate the provision of follow-up care after discharge from the hospital. Fiscal intermediaries determine whether claims for these services meet Medicare coverage criteria after a claim has been submitted.

Explanation of provision.—The provision would amend Medicare's conditions of participation for hospitals to require that beneficiaries receive a notice of patient rights at the time of admission to the hospital. The notice would include information concerning rights to inpatient and post-hospital care under Medicare, financial liability, and appeal rights.

The provision would require a hospital, as a condition of participation in Medicare, to provide a timely discharge planning evaluation for beneficiaries that would meet guidelines to be established by the Secretary. The discharge evaluation would assess the patient's need for post-hospital services and the availability of these services. The Committee intends that the Secretary exercise flexibility in establishing the standards and guidelines for discharge planning so as not to place undue hardship on small hospitals, particularly those in rural areas. In establishing conditions of participation for hospitals not accredited by the Joint Commission on Accreditation of Hospitals, the Secretary did provide flexibility in the discharge planning requirements, including flexibility for the hospital to determine the appropriate personnel to carry out the discharge planning. The Committee expects the Secretary to allow for similar flexibility under the discharge planning requirements of this provision.

The Secretary would be required to implement a pilot program to test prior and concurrent authorization for SNF and home health services as an alternative to the waiver of liability provision. The results of the pilot program would be due to the Congress April 1988.

Effective date.—The notice of patient rights would be required no later than six months after enactment. The discharge planning requirement would be effective one year after the date of enactment.

12. PRO Reviw of Discharge Appeals

Current law.—If a Medicare beneficiary believes that his or her discharge decision is premature, he or she may appeal to a Utilization and Quality Control Peer Review Organization (PRO). The PRO must make a determination within three working days of receipt of the appeal. In the event of an adverse decision, the beneficiary may be financially liable for several days of continued stay before receiving notice of the PRO's decision.

Explanation of provision.—The PRO would be required to make the appeal decision within two calendar days after receipt of an appeal. A beneficiary who appeals his or her discharge notice and loses the appeal would not be liable for charges for a continued inpatient hospital stay until the day following receipt of the PRO's adverse decision on appeal. This financial protection could apply only up to four days after the discharge notice.

Effective date.—The expedited PRO review of hospital denial notices would be effective 30 days after enactment.

13. PRO Review of Inpatient Hospital Services and Readmissions

Current law.—Utilization and Quality Control Peer Review Organizations (PROs) review cases of all patients that have been readmitted to the same hospital within 15 days of discharge.

Explanation of provision.—Review of cases that have been readmitted to the hospital will include at least a sample of readmissions occurring within 31 days of discharge.

The provision would require the Secretary to take measures needed to ensure that PROs receive necessary patient information. This information should be transmitted directly from the hospital if the fiscal intermediary unnecessarily delays forwarding the data.

Effective date.—Intensified readmission review would apply to PRO contracts entered into or renewed on or after January 1, 1987. The timely data and information sharing requirements would be effective within six months of the date of exactment.

14. PRO Review of Quality of Care

Current law.—Utilization and Quality Control Peer Review Organizations (PROs) are required to review at least a sample of the professional activities of physicians and other health care practitioners and of institutional and noninstitutional providers (including health maintenance organizations and competive medical plans) for purposes of determining whether the services provided were medically necessary and met professionally recognized standards of care. However, PRO contracts limit required review to inpatient hospital services. PROs are also responsible for assuring confidentiality of patient information.

Explanation of provision.—The provision would require each PRO to devote a reasonable proportion of its efforts to quality of care reviews. In addition, each PRO would be required to provide that a reasonable allocation of its quality of care review activities is made among the different cases and settings (including postacute care settings, ambulatory settings, and health maintenance organizations) for which potential problems of quality have been identified. The provision would require the Secretary of Health and Human Services to identify methods to assist PROs in identifying those cases which are more likely than others to be associated with quality care problems.

PROs would be required to acknowledge formally all written beneficiary complaints about the quality of Medicare covered services. This acknowledgement would advise the beneficiary that appropriate action would be taken. The PRO will determine the appropriate course of action which may include a formal investigation. The PRO would be expected to establish a process to account for each request and its disposition.

In addition, PROs would be required to share confidential information related to quality of care with state licensing authorities and national accrediting bodies acting pursuant to section 1865 of the Social Security Act.

Effective date.—The provision relative to PRO requirements would apply to PRO contracts entered into or renewed on or after January 1, 1987. The amendment relating to the Secretary's responsibilities to help PROs identify quality problems would be effective on enactment. Beneficiary complaints received nine months after the date of enactment must be acknowledged. PROs are required to share confidential information for requests received six months after enactment.

15. Payment for Home Health Services

Current law.—Under regulations published July 5, 1985, reimbursement for home health services is limited to 120 percent of the mean cost per visit incurred by all home health agencies. For cost reporting periods beginning on or after July 1, 1986 the limits are set at 115 percent of the mean, and for such periods beginning on or after July 1, 1987 the limits are set at 112 percent of the mean. Separate limits are established for and applied to each type of service (e.g., skilled nursing, home health aide, and physical therapy services).

Explanation of provision.—The provision would allow home health agencies to apply the per service limits in the aggregate rather than to each type of home health service. The General Accounting Office would be required to report on the appropriateness of applying the limits on a service-by-service basis.

Effective date.—Cost reporting periods beginning on or after October 1, 1986.

16. Occupational Therapy Services

Current law.—Part B coverage of occupational therapy services is limited to treatment in a hospital outpatient department, comprehensive outpatient rehabilitation facility, home health agency, or when provided incident to physicians' services.

Explanation of provision.—The provision would extend reimbursement under part B of Medicare for occupational therapy services. This therapy would be covered when provided in a skilled nursing facility (when part A coverage is exhausted), in a clinic, or a rehabilitation agency. Payment would be made on a reasonable cost basis.

The provision would provide part B coverage of occupational therapy services when furnished in a therapist's office or a beneficiary's home. The independently practicing therapist would have to meet licensing and other standards prescribed by the Secretary. No more than $500 in incurred expenses would be eligible for coverage in a calendar year per beneficiary. Payment would be based on 80 percent of reasonable charges.

Effective date.—October 1, 1986.

17. Modify Waiver of Liability and Appeals for Home Health Services

Current law.—Home health agencies can receive payments for items or services which are not deemed reasonable and necessary or are determined to be custodial in nature, if neither the beneficiary nor the provider knew (or could reasonably be expected to have known) that they were not covered. Home health care agencies can be presumed to meet this test if their claims denial rate falls below 2.5 percent. COBRA maintained this favorable presumption criteria for home health agencies until 12 months after claims processing for home health agencies has been consolidated under 10 regional intermediaries (as required by law).

Beneficiaries who are homebound and require (a) skilled nursing services on an intermittent basis or (b) physical or speech therapy are eligible for home health services. Program guidelines specify that intermittent care is care usually provided a few hours a day several times a week. These guidelines also specify that intermittent care can include medically reasonable and necessary daily care (7 days a week) for a short period of time (2-3 weeks) and, in a few cases involving unusual circumstances, an additional period when certified by a physician. The manuals classify denials of coverage under the intermittent or homebound criteria as "technical denials". Technical denials cannot be appealed.

Explanation of provision.—The provision would amend the waiver of liability provision. The provision would allow the payment for home health services if the provider did not or could not have been expected to know that payment would be denied on the basis that the individual was not homebound or did not require care on an intermittent basis. By removing these coverage criteria from "technical denial" status, all home health service claims could be appealed. The Secretary would be required to issue regulations which specify the limitations that were applied through manuals and guidelines as of January 1, 1986 to be applied to homebound and intermittent status for covered home health services. Final regulations must be published by July 1, 1987.

Effective date.—The expansion of the appeal and waiver of liability provisions would apply to coverage denials occurring after July 1, 1987.

18. Establishment of Patient Outcome Assessment Project

Current law.—No provision.

Explanation of provision.—The Committee is concerned about the wide variation in medical practice patterns throughout the country. The provision would require the Secretary of Health and Human Services to study nationwide variations in medical practice patterns for certain medical procedures. Further, the Secretary would be required to study the relationship between these variations and health status outcomes, with primary emphasis on Medicare beneficiaries.

Effective date.—October 1, 1986.

B. Medicaid Provisions

1. Optional Coverage of Poor Pregnant Women, Infants, and Children

Current law.—States are required to provide Medicaid coverage to all children receiving assistance under the federally assisted Aid to Families with Dependent Children (AFDC) program and may provide coverage for children who would be eligible for AFDC except for income requirements (known as the medically needy). In addition, States may cover all or reasonable categories of children under age 18 or 19 or 20 or 21 who do not meet the AFDC definition of dependent children (known as Ribicoff children). States are required to cover all children born after October 1, 1983 up to age five who meet the AFDC income and resources requirements and may extend coverage to all such children under age five immediately. States are also required to cover pregnant women meeting AFDC income and resources standards. The January 1986 AFDC levels in the 48 contiguous States and the District of Columbia were all below the poverty line.

Explanation of provision.—The provision would give States the option to expand Medicaid eligibility to cover: (1) pregnant women with incomes up to the Federal poverty level; and (2) young children with family incomes up to the Federal poverty level. Initially the States could cover children under age one. Beginning in fiscal year 1988 the age level would increase by one in each fiscal year until all children up to age five were included. Under the provision, States would be permitted, but not required, to impose an assets test for both pregnant women and children equal to that used under the current AFDC, Supplement Security Income (SSI), or the State medically needy program.

The provision would specify that election of expanded Medicaid coverage would be optional with the States. Covered services would include prenatal, delivery, and 60-days of post-partum care services for pregnant women and all Medicaid services for covered children.

The provision is intended to promote reductions in infant mortality and incidence of low birthweight. Accordingly, States will be able to elect to cover women and certain children with incomes up to the poverty line for services that would be designed to achieve these goals.

The Committee believes that to ensure the effectiveness of this provision, States should conduct outreach efforts to insure that potentially eligible women are aware of the availability of this coverage. Without such outreach and care, this amendment might merely result in substitution of Federal funds for State or local funds now spent on hospital-based deliveries without any concomitant reduction in infant mortality or incidence of low birthweight. This provision is not intended to permit States or localities to reduce their current levels of services to pregnant women and children.

Effective date.—April 1, 1987.

2. Optional Coverage of Elderly and Disabled Poor and Poor Medicare Beneficiaries

Current law.—Eligibility of the elderly and the disabled for Medicaid is linked to actual or potential receipt of cash assistance under the Federal Supplemental Security Income (SSI) program. The elderly and the disabled covered under Medicaid generally are persons receiving Federal and/or State SSI payments, residing in a skilled nursing facility or intermediate care facility, or incurring substantial medical expenses. The income and resources eligibility criteria differ substantially among the States.

Proposal.—The States would have the option to expand Medicaid eligibility to cover the elderly and disabled with an income threshold up to the Federal poverty level for (1) all Medicaid services; or (2) only the cost of the Medicare part A deductible and coinsurance, and the part B premium, deductible, and coinsurance. The resource limit would be the same as under the SSI program for States which restrict coverage to the categorically needy; States having medically needy programs could use the medically needy resource levels.

The provision would provide that election of expanded coverage would be optional with the States. However, the election could only be made where the State had expanded its Medicaid coverage for children up to one year of age and pregnant women as authorized under the Committee bill. States would not be required to use the same income levels for newly eligible children and pregnant women as they use for the newly eligible aged and disabled.

Effective date.—July 1, 1987.

3. Hold-harmless Provision for Change in Federal Medical Assistance Percentage

Current law.—COBRA provided that beginning in fiscal year 1987, the Federal Medical Assistance Percentage (FMAP) is to be calculated on an annual rather than a biennial basis. The FMAP, which represents the Federal share of Medicaid expenditures in the State, is tied to a formula inversely related to the per capita income of the State.

Explanation of provision.—The provision would specify that any State which would be adversely affected in FY 1987 by the change from a biennial to annual calculation of the FMAP, would be permitted to continue to use the FY 1986 matching rate for FY 1987 for Medicaid.

Effective date.—October 1, 1986.

4. Respiratory Care Services for Ventilator-dependent Individuals

Current law.—States are required to cover home health services for Medicaid beneficiaries who are over 21 and categorically needy under 21 if they are eligible to receive skilled nursing facility services. They may also offer such services to the medically needy.

Medicaid will pay for ventilator dependent services in the home only if the State has elected to provide such coverage on a state-wide basis or if the State is offering the services to a target population group under a home and community-based services waiver.

Explanation of provision.—The provision would require States to cover respiratory services in the home for individuals who (1) are medically dependent on a ventilator for life support at least 6 hours per day; (2) have been so dependent for at least 30 consecutive days (or the maximum number of days authorized under the State plan, whichever is less), as inpatients, and who, but for home respiratory care, would require respiratory care on an inpatient basis paid for by Medicaid in these institutions; (3) have adequate social support services to be cared for at home; and (4) wish to be cared for at home. The requirements under (2) may be satisfied by a continuous stay in any one or more of the following facilities; hospitals, skilled nursing facilities, or intermediate care facilities.

Effective date.—Service performed on or after October 1, 1986.

5. Respite Care Pilot Project in New Jersey

Current law.—Medicaid does not currently cover respite care services except where provided under a home- and community-based services waiver.

Explanation of provision.—The provision would fund a respite care project in the State of New Jersey now operated by the New Jersey Department of Health. All families would be eligible for the project but priority would be given to Medicaid recipients, with others paying on a sliding scale for services. Highest priority will go to elderly beneficiaries who will become Medicaid eligible if they become institutionalized. Half of the funding for the respite care program would come from the State and half from Medicaid. In no case will Federal outlays exceed $1,000,000 in FY1987, and $2,000,000 in each of FYs 1988, 1989, and 1990. Federal funding will cease to be available after September 30, 1990.

Effective date.—Enactment.

6. Presumption of Eligibility for Pregnant Women

Current law.—Title XIX of the Social Security Act allows for a three month retroactive eligibility period prior to the date on which application for medical assistance is made. Medicaid regulations further require State agencies to determine eligibility within 45 days from the day of the application for benefits. If the application is approved, medical expenses incurred during those 45 days would be reimbursed under the normal Medicaid rules. If the application is denied, medical expenses incurred during those 45 days would be the responsibility of the individual.

Explanation of provision.—The provision would permit State agencies to accelerate Medicaid eligibility for ambulatory prenatal care. Under the program, the agency may for any one pregnancy, grant presumptive eligibility for a period not to exceed 45 days if: (1) the woman has begun maternity care with a qualified Medicaid provider eligible to participate in the presumptive eligibility program; (2) the provider determines that the woman's family income falls below the applicable Medicaid standard; (3) the provider notifies the State agency within 5 working days of the woman's eligibility; and (4) the individual applies for program benefits within 14 calendar days of the beginning date of the presumed eligibility period.

A qualified Medicaid provider for purposes of this provision is an organization which provides outpatient hospital, rural health, or Medicaid clinic services as defined under Title XIX of the Social Security Act. In addition, the provider must be receiving funding from certain other Federal programs or be a State-approved perinatal clinic.

States must provide guidelines to these clinics on how to determine this presumptive Medicaid eligibility. Clinics that do not perform this eligibility function to the satisfaction of the State can be barred from participating from this presumptive eligibility program.

Federal medical assistance payments made on behalf of pregnant women during the accelerated eligibility period would be at the same rate applicable for other beneficiaries in the State regardless of whether such women are ultimately determined to be eligible for medical assistance.

State agencies would be responsible for processing the normal application for benefits. This application would include all the information otherwise required for all State Medicaid applicants, such as third party liability information, social security number, establishment of paternity, assignment of rights to payments, and all information related to income and resources.

Effective date.—April 1, 1987.

C. Miscellaneous Provisions

1. Retroactive Modification of Child Support Arrearages

Current law.—In most States, a child support order can be modified only prospectively; that is, the terms of the modification do not take effect until after the date on which it becomes final. Thus, only future child support payments would be affected. However, a number of States permit the child support award to be retroactively modified. In such States, the court (or administrative entity) has the authority to reduce or nullify arrearages. Further, under the Uniform Reciprocal Enforcement of Support Act (URESA), in interstate cases, the court in the noncustodial parent's State may modify the child support order of the custodial parent's State to the same extent the order could be modified in the State that issued the order.

Explanation of provision.—The provision adds to the child support enforcement program established by title IV of the Social Security Act a new requirement which States must meet to be in compliance with that program. To meet this new requirement, State laws relating to the enforcement of child support orders must prohibit changes in those orders which are effective on a retroactive basis. The Committee recognizes that a person's financial circumstances change. The noncustodial parent may lose his or her job or face other circumstances that cause him or her not to be able to afford the original child support award. The amendment is not intented to prevent changes in future child support payments if the financial situation of the noncustodial parent changes. What the Committee is seeking to prevent is the purposeful noncompliance by the noncustodial parent, because of his hope that his child support obligation will be retroactively forgiven. If the noncustodial parent's circumstances change because of unemployment, illness or another such reason, the amendment puts the burden on the noncustodial parent to notify the custodial parent and the court or entity which issued the child support order of his changed circumstances and his intent to have his child support order modified. No modification would be permitted before the date of this notification.

2. Hold-harmless Provision for Change in Federal Medical Assistance Percentage for Purposes of the AFDC Program

Current law.—COBRA provided that beginning in fiscal year 1987, the Federal Medical Assistance Percentage (FMAP) is to be calculated on an annual rather than a biennial basis. The FMAP is tied to a formula inversely related to the per capita income of the State. The FMAP may also be used for AFDC.

Explanation of provisions.—The provision would specify that any State which would be adversely affected in FY 1987 by the change from a biennial to annual calculation of the FMAP, would be permitted to continue to use the FY1986 matching rate for FY1987 for AFDC.

Effective date.—October 1, 1986.

TITLE VI-A: REVENUE PROVISIONS

1. Extend Medicare Coverage and Hospital Insurance Tax to All State and Local Government Employees (sec. 661 of the bill)

Present law.—Prior to enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), P.L. 99-272, State and local government employees were covered for social security and Medicare benefits only if the State and the Secretary of Health and Human Services (HHS) entered into a voluntary agreement providing such coverage. In COBRA, the Congress extended Medicare coverage (and the corresponding hospital insurance payroll tax) on a mandatory basis to State and local government employees hired after March 31, 1986, for services performed after that date.

COBRA also authorized States to elect to extend Medicare coverage to State and local government employees hired prior to April 1, 1986, by voluntary agreement with HHS. Under present law, however, Medicare coverage is not mandatory for State and local government employees hired prior to April 1, 1986 unless such a voluntary agreement is in effect. Medicare coverage (and the hospital insurance payroll tax) is mandatory for Federal employees.

For wages paid in 1986 to Medicare-covered employees, the combined employer-employee hospital insurance tax rate is 2.9 percent (1.45 percent on each) of the first $42,000 of wages (Code secs. 3101, 3111, and 3121(a)).

Reasons for change.—Individuals who have worked in State and local government employment that is excluded from Medicare coverage often qualify for Medicare benefits. These individuals qualify as a result of work performed in other employment covered under the program or through the entitlement of a spouse. By and large, individuals who qualify after having worked in excluded State and local government employment have contributed significantly less in FICA payroll taxes than others who become entitled to benefits having had comparable lifetime earnings all of which were subject to FICA. Such individuals thus represent an inequitable financial drain on the Medicare hospital insurance program.

Unlike monthly social security benefits, where minimal covered earnings and tax contributions result in minimal benefit amounts, entitlement to Medicare is entitlement for the full range of benefits. The benefits are the same regardless of whether the insured worker has made significant tax contributions over his or her working lifetime or whether the individual has qualified with the minimum number of quarters of coverage. The committee believes that this anomaly should be corrected.

Explanation of provision.—The provision extends hospital insurance (Medicare) coverage on a mandatory basis to all employees of State and local governments not otherwise covered for Medicare under present law.[1] The employers and their employees will become liable for the hospital insurance portion of the FICA tax, and the employees will earn credit toward Medicare eligibility based on their covered earnings.[2] (The optional Medicare coverage provision enacted in COBRA is terminated.) The collection of the hospital insurance tax with respect to State and local government employees to whom the provision applies is to be carried out in the same manner as provided in COBRA with respect to employees hired after March 31, 1986.

Effective date.—Medicare coverage and the corresponding hospital insurance payroll tax are extended to all State and local employees (not otherwise covered by present law) effective after April 30, 1987, for services performed after that date.

2. Increase in Cigarette Excise Tax Rates (sec. 662 of the bill)

Present law.—An excise tax is imposed on cigarettes manufactured in or imported into the United States (Code sec. 5701). In COBRA, the Congress made permanent the tax rate on small cigarettes at $8 per thousand (i.e., 16 cents per pack of 20 cigarettes), and the tax on large cigarettes at $16.80 per thousand. (Proportionately higher rates apply to large cigarettes that exceed 6.5 inches in length.) Most cigarettes are classified as small cigarettes (i.e., weigh not more than three pounds per thousand) and thus are taxable at 16 cents per pack.

Reasons for change.—The committee determined that the present budgetary situation requires an increase in cigarette excise tax rates. The committee further believes that an increase in cigarette taxes should help to discourage smoking, particularly among younger Americans, and reduce associated health risks.

The committee took into consideration that cigarette excise tax rates were unchanged between 1951 and 1982. Because the tax is imposed at a flat rate, rather than as a percentage of sale price, the effective rate of the tax declined steadily during this period. Even with the increase made by the bill, the tax rate will remain lower than it would have been had the 1951 tax rate been indexed for changes since 1951 in the consumer price index.

Explanation of provision.—The bill increases the excise tax rate on small cigarettes to $12 per thousand (i.e., from 16 to 24 cents per pack of 20 cigarettes). Large cigarettes not exceeding 6.5 inches in length are to be taxed at a rate of $25.20 per thousand; proportionate increases apply for large cigarettes that exceed 6.5 inches in length.

---

[1] As under present law, Medicare coverage and the hospital insurance tax are not extended to individuals hired by a State or political subdivision to relieve unemployment; patients or inmates working in a hospital, home, or other institution; temporary State or local government workers hired for certain emergencies; or certain students working in District of Columbia hospitals. Also, the provision extends for Medicare coverage purposes the present-law exception, applicable under social security and Medicare coverage pursuant to voluntary State agreements, for certain election officials and election workers who are paid less than $100 in a calendar year (see 42 U.S.C. sec. 418(c)(8)).

[2] Also, employees who performed service for a State or local government before May 1, 1987 that would constitute Medicare-qualified government employment if performed after May 1, 1987 may receive credit, for Medicare coverage purposes only, for such prior service under transitional provisions in the bill, similar to transitional provisions enacted when mandatory Medicare coverage was extended to Federal employees. The bill includes a provision authorizing appropriations as required for the transitional provision.

As in the case of the 1982 rate increase, the increased rates under the bill apply to certain cigarette floor stocks. Under the bill, an additional tax is imposed on each person holding cigarettes for sale (other than certain retail stocks) on October 1, 1986, if the cigarettes were removed from bonded premises before that date and taxes were paid on removal at the present-law rates. The additional tax (which is treated as a tax imposed under sec. 5701) equals the excess of the tax that would apply to removal of the cigarettes from bonded premises on or after October 1, 1986, over the present-law tax rates on such cigarettes (e.g., the additional tax on small cigarettes is $4 per thousand). This additional tax is due and payable on November 17, 1986.

The bill expressly provides that cigarettes that are held in a foreign trade zone on October 1, 1986 and that are entered into the customs territory of the United States on or after October 1, 1986 are treated as held for sale on October 1, 1986 and are subject to the floor stocks tax. This includes both foreign articles on which taxes have been determined or customs duties liquidated by a customs officer at the present-law rate, and also domestic articles as to which tax liability has attached at the present-law rate and which have been placed under supervision of a customs officer, if such foreign or domestic articles are held in a foreign trade zone on October 1, 1986 and are entered or re-entered into the customs territory of the United States on or after October 1, 1986.

An exemption from the floor stocks tax is provided only for cigarettes held for sale by a retailer on October 1, 1986 at the place where intended to be sold at retail. For example, cigarettes held for sale on October 1, 1986 on the shelves of a retail store will be exempt as held by a retailer, but cigarettes held on October 1, 1986 in warehouses or other similar facilities where retail consumers do not have regular access to them or in a foreign trade zone are not to be treated as retail stocks held by a retailer and hence are not eligible for the exemption.

Effective date.—The provision is effective for cigarettes removed from bonded premises after September 30, 1986, and for floor stocks (other than exempted retail floor stocks) held or treated as held on October 1, 1986.

ADDITIONAL VIEWS OF SENATOR WILLIAM ARMSTRONG ON THE MEDICARE TAX ON STATE AND LOCAL EMPLOYEES

Earlier this year, Congress imposed the Medicare Hospital Insurance payroll tax on State and local employees hired after March 31, 1986—that is, on newly hired workers. It was the judgment of Congress last fall that such a significant tax on State government and workers should be phased-in prospectively. I believe this was the appropriate way to handle the imposition of the tax and do not support imposing it on current State and local employees as proposed in this reconciliation bill.

I recognize that many State and local employees become eligible for Medicare benefits through private sector employment, or through a spouse, and as a result receive full benefits while paying a lesser amount in Medicare taxes than a private sector employee. In my view, this inequity was addressed last year in an equitable manner by phasing in the new tax. There is about a 9% turnover rate each year among State and local employees. Thus, over a relatively short period of time, all State and local workers will be required to pay into Medicare.

I think this solution is far preferable to imposing a direct 1.45% pay cut on current State and local workers and requiring State governments as employers to pay an equal tax. I am concerned this proposal will seriously undermine financial stability of existing State supported retirement and health care programs. In addition, some State treasuries are already suffering from the problems facing the oil and farm industries. In recent years, States have also faced limitations on direct Federal aid from Congress. While reductions in such Federal aid are justified because of the Federal deficit, I do not believe Congress should, at the same time, ask State governments to pay more from their own treasuries in taxes to Washington.

CBO COST ESTIMATE

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

Rudolph G. Penner
Director

July 29, 1986

Honorable Bob Packwood
Chairman
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Congressional Budget Office has prepared the attached cost estimates of the provisions in the Senate Committee on Finance's reconciliation package. Provisions with no outlay or revenue effect are not listed in the tables. The estimates are shown in two separate attachments--one showing estimated outlay effects and one showing estimated revenue effects.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

Rudolph G. Penner

cc: Honorable Russell B. Long
Ranking Minority Member

TABLE 1. THE ESTIMATED REVENUE EFFECTS OF THE SENATE FINANCE COMMITTEE RECONCILIATION PROVISIONS RELATIVE TO THE BUDGET RESOLUTION BASE (Fiscal years, in billions of dollars)

	1987	1988	1989	3-Year Total
Increase cigarette excise tax by 8 cents per pack, net[a]	1.593	1.684	1.693	4.970
Extend Medicare coverage to state and local government employees hired prior to April 1, 1986[b]	0.829	2.151	2.169	5.149
Total Revenue Effect, Net	**2.422**	**3.835**	**3.862**	**10.119**

a. Effective October 1, 1986.

b. Effective May 1, 1987.

Congressional Budget Office
Tax Analysis Division
July 28, 1986

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TABLE 2 -
FINANCE RECONCILIATION PROVISIONS
IN MILLIONS OF DOLLARS

SUBTITLE A -- OUTLAY PROVISIONS

Part 1 -- Provisions Relating to the Medicare Program

SECTIONS		FY 1987	FY 1988	FY 1989	3-YEAR TOTAL
Subpart A -- Provisions Relating to Part A of Medicare					
601 - Payments for Inpatient Hospital Services **	BA	10	30	55	95
	0	-180	-230	-260	-670
602 - Payments for Capital Related Costs	BA	5	15	40	60
	0	-75	-205	-310	-590
603 - Changes in Inpatient Hospital Deductible	BA	-40	-105	-175	-320
	0	420	660	630	1710
604 - Requiring Notice of Hospital Discharge Rights	BA	0	-1	-1	-2
	0	3	5	7	15
SUBTOTAL FOR SUBPART A --	BA	-25	-61	-81	-167
	0	168	230	67	465
Subpart B -- Provisions Relating To Parts A and B of Medicare					
611 - Medicare Coverage as Secondary Payor	BA	-40	-36	-12	-88
	0	-255	-340	-370	-965
612 - Payment of Medicare Claims	BA	615	360	375	1350
	0	-2140	-185	-245	-2570
613 - Payment For Home Health Services	BA	-1	-2	-5	-8
	0	15	15	20	50
614 - Modifications of Waiver of Liability and Appeal Provisions for Home Health Services	BA	-2	-5	-10	-17
	0	40	45	50	135
615 - Provider Representation of Beneficiaries on Appeals	BA	0	-1	-1	-2
	0	4	7	7	18

SECTIONS		FY 1987	FY 1988	FY 1989	3-YEAR TOTAL
616 - Establishment of Patient Outcomes Project					
	BA	0	-1	-2	-3
	0	5	7	8	20
SUBTOTAL SUBPART B -	BA	572	315	345	1232
	0	-2331	-451	-530	-3312
Subpart C -- Provisions relating to Part B of Medicare					
621 - Payments for Physician Services					
	BA	-105	-110	-125	-340
	0	-100	-105	-120	-325
622 - MEI for Physicians Services					
	BA	-85	-215	-260	-560
	0	-50	-200	-250	-500
623 - End Stage Renal Disease Payments					
	BA	-32	-32	-32	-96
	0	-30	-30	-30	-90
624 - Payments for Ambulatory Surgery					
	BA	-55	-95	-125	-275
	0	-45	-85	-120	-250
625 - Occupational Therapy Services					
	BA	15	16	20	51
	0	15	15	20	50
SUBTOTAL SUBPART C -	BA	-262	-436	-522	-1220
	0	-210	-405	-500	-1115
Subpart D -- Peer Review Organizations					
631 - PRO Review of Hospital Denial Notices					
	BA	0	0	0	0
	0	1	2	2	5
632 - PRO Review of Inpatient Hospital Services					
	BA	0	0	-1	-1
	0	2	3	3	8
633 - Requiring PRO Review of Quality of Care Services					
	BA	0	0	0	0
	0	1	2	2	5
SUBTOTAL SUBPART D -	BA	0	0	-1	-1
	0	4	7	7	18
SUBTOTAL MEDICARE PROVISIONS	BA	285	-182	-259	-156
	0	-2369	-619	-956	-3944

** Estimate pending final legislative language

Part 2 -- Provisions Relating to the Medicaid Program

SECTIONS		FY 1987	FY 1988	FY 1989	3-YEAR TOTAL
641 - Optional Coverage of Pregnant Women and Infants					
	BA	25	85	110	220
	0	25	85	110	220
642 - Optional Coverage of Elderly and Disabled					
	BA	45	170	240	455
	0	45	170	240	455
643 - Respiratory Care Services					
	BA	-2	0	0	-2
	0	-2	0	0	-2
644 - Hold-harmless for Medicaid Matching Percentage					
	BA	50	0	0	50
	0	50	0	0	50
645 - Respite Care Pilot Project					
	BA	1	2	2	5
	0	1	2	2	5
646 - Presumptive Eligibility					
	BA	2	2	2	6
	0	2	2	2	6
SUBTOTAL MEDICAID PROVISIONS	BA	121	259	354	734
	0	121	259	354	734
Part 3 -- Miscellaneous Provisions					
651 - Procedure to Prohibit Retroactive Modification of Child Support Payments					
	BA	-1	-2	-3	-6
	0	-1	-2	-3	-6
651 - Hold-harmless for AFDC Matching Percentage					
	BA	15	0	0	15
	0	15	0	0	15
SUBTOTAL MISC. PROVISIONS	BA	14	-2	-3	9
	0	14	-2	-3	9
OFFSET TO REVENUE PROVISIONS					
Additional Medicare Expenditures As A Result of State and Local Coverage					
	BA	0	0	0	0
	0	0	2	6	8
SUBTOTAL ALL OUTLAY PROVISIONS					
	BA	420	75	92	587
	0	-2234	-360	-599	-3193

ADDITIONAL VIEWS OF SENATOR GEORGE J. MITCHELL, RECONCILIATION ACT OF 1986

I cannot support the recommendations of the Finance Committee to meet its reconciliation instructions because, once again, the Committee is relying on regressive excise and payroll taxes to reduce federal budget deficits.

Too often over the last few years, Congress has turned to taxes which are not based on ability to pay as a means of meeting budget reconciliation instructions for deficit reduction.

As a result, federal excise, payroll, and use taxes are contributing a growing share of federal revenues, causing a redistribution of tax burdens away from upper income families and toward middle and low income earners. In 1982, 1983, 1984 and again earlier this year, Congress enacted legislation increasing the payroll tax and almost every excise tax while creating new use fees.

Unfortunately, it appears that this trend toward greater reliance on taxes which are not based on ability to pay will continue. This is the second budget reconciliation measure we have considered during 1986. The measure enacted earlier this year increased federal revenues by $6 billion over a three year period, almost all it from excise and payroll taxes.

In this reconciliation measure the Finance Committee is proposing to raise another $10 billion over three years, all of which would be raised from higher payroll and excise taxes.

As we consider this budget measure, House and Senate conferees are meeting to finalize an income tax reform measure that will reduce individual income taxes between $100 billion and $140 billion over the next five years. After 18 months of consideration of income tax reform, Congress is not likely to turn to the income tax system again. Yet, it is likely that in September Congress will once again have to look for more revenues to meet the Gramm-Rudman budget targets. As a result, Congress will vote still more increases in excise and fixed taxes not related to ability to pay, even as we reduce individual income taxes which are based on ability to pay.

This continuing redistribution of tax burdens on to lower and middle income earners is neither fiscally nor socially responsible. It should be stopped.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Title VII

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MARGARET P CRENSHAW MINORITY STAFF DIRECTOR

United States Senate
COMMITTEE ON
GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510

July 29, 1986

The Honorable Pete V. Domenici
Chairman
Committee on Budget
Washington, DC 20510

Pete

Dear Mr. Chairman:

In accordance with the reconciliation instructions in the First Concurrent Resolution on the Budget (S.Con.Res. 120) the enclosed recommendation of the Committee on Governmental Affairs to effect budgetary savings is submitted.

The Committee has approved legislation which establishes civil penalties and fines for those who submit false claims and statements to the federal government. The enclosed language is a modification of S. 1134, previously reported by the Committee.

Other recommendations to effect further savings will be submitted shortly by separate letter.

Sincerely,

Bill

William V. Roth, Jr.
Chairman

WVR/MH/smc

Enclosure

PROGRAM CIVIL FRAUD

Part B of section 7 establishes an administrative remedy for false claim and statement cases under $100,000 that the Department of Justice has declined to litigate. This remedy is based on legislation (S. 1134, the Program Fraud Civil Remedies Act of 1986) that was reported by the Governmental Affairs Committee on November 19, 1985 (report 99-212).

While judicial remedies are available to penalize and deter fraud against the government, the cost of litigation often exceeds the amount recovered, thus making it economically impractical for the Justice Department to go to court. The government is frequently left without an adequate remedy for the small-dollar cases.

The consequence, according to the Justice Department, is that the federal government loses "tens, if not hundreds, of millions of dollars" to fraud each year. Beyond the actual monetary loss, fraud in federal programs also erodes public confidence in the administration of these programs by allowing ineligible persons to participate.

In a July 16, 1986, letter to Senator William V. Roth, Jr., Chairman of the Governmental Affairs Committee, the Congressional Budget Office states that the language contained in part B of section 7 "would result in a net reduction in the deficit as a result of increased civil penalty collections and/or some decrease in fraudulent activity." Although CBO is reluctant to provide a firm savings estimate, the letter cites a 1981 General Accounting Office report, which estimates that "cases of fraud targeted by this bill cost the government $30 million to $40 million annually."

Under the administrative remedy set forth in this section, a typical case would begin with an investigation conducted by the agency's investigating official, usually the Inspector General. The IG's findings would be transmitted to the agency's reviewing official, who would independently evaluate the allegations to determine whether there is adequate evidence to believe that a false claim or statement has been submitted.

If so, the matter would be referred to the Justice Department for consideration. This procedure ensures that the Department will have an opportunity to review the charges and elect, if it so chooses, to litigate in federal court. An agency may only commence administrative proceedings against the person alleged to be liable if the Justice Department approves initiation of such proceedings. In those cases, the reviewing official would notify the person of the charges and of his or her right to a hearing.

An Administrative Law Judge -- an independent, trained hearing examiner -- would conduct the hearing to determine whether or not the person is liable and the amount of penalty and assessment, if any, to be imposed. The hearing itself would be conducted pursuant to the due process safeguards of the Administrative Procedure Act, which entitles the person to a written notice of the allegations, the right to be represented by counsel, and the right to present evidence on his or her own behalf. The amendment even goes beyond these APA protections by providing the person discovery rights.

Finally, the person alleged to be liable has the right to appeal the hearing examiner's decision to the agency head and then, having exhausted all administrative remedies, the right to obtain judicial review in a U.S. Court of Appeals.

In establishing liability under this administrative remedy, the government would not only have to prove that a claim or statement is false, but also that the person "knows or has reason to know" that the claim or statement is false. The amendment defines this knowledge standard to cover those persons who either have actual knowledge that a claim or statement submitted is false, act in deliberate ignorance of the truth or falsity of the claim or statement, or act in reckless disregard of the truth or falsity of the claims or statement. The penalty and assessment, if the person is found liable, would be up to $10,000 for each false claim or statement, plus double the amount falsely claimed.

The "knows or has reason to know" standard for establishing liability under this section is intended to capture those persons who recklessly disregard facts which are known or readily discoverable upon reasonable inquiry, while excluding those persons who submit false claims or make false statements through mistake, momentary thoughtlessness, or inadvertence. The definition clarifies, therefore, that a person who makes a false claim or statement through mere negligence does not meet the requisite *scienter* requirement and would not be held liable under the Act. Only those individuals who are extremely reckless, who demonstrate an extreme departure from ordinary care, would be subject to liability.

CBO COST ESTIMATE

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

Rudolph G. Penner
Director

July 16, 1986

Honorable William V. Roth, Jr.
Chairman
Committee on Governmental Affairs
United States Senate
340 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

I am pleased to clarify the CBO cost estimate for S. 1134, dated December 3, 1985. We believe that the bill would result in a net reduction in the deficit as a result of increased civil penalty collections and/or some decrease in fraudulent activity. The amount of the savings cannot be reliably estimated, however, because of uncertainty as to the amount of fraud, the way agencies would make use of the new authority, and the deterrent effect of any agency actions. As a result, there is no clear basis for projecting the savings that would result from the bill. As stated in CBO's cost estimate, the General Accounting Office conducted a comprehensive study of fraud in government programs (Fraud in Government Programs: How Extensive Is It? How Can It Be Controlled?, AFMD-81-73), and estimated that cases of fraud targeted by this bill cost the government $30 million to $40 million annually.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

Rudy P

Rudolph G. Penner

cc: Honorable Thomas F. Eagleton
Ranking Minority Member

WILLIAM V. ROTH, JR., DELAWARE, CHAIRMAN

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United States Senate
COMMITTEE ON
GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510

July 29, 1986

The Honorable Pete V. Domenici
Chairman
Committee on the Budget
Washington, D.C. 20510

Pete

Dear ~~Mr. Chairman~~:

In accordance with the reconciliation instructions in the First Concurrent Resolution on the Budget (S. Con. Res. 120) the recommendations of the Governmental Affairs Committee to effect the required budgetary savings are enclosed.

The Committee has adopted language to provide changes in the revenue forgone appropriation and moves the date for participation in the new Federal Employees Retirement System to April 1987. In addition, the Committee has approved legislation which establishes civil penalties and fines for those who submit false claims and statements to the federal government.

Sincerely,

Bill

William V. Roth, Jr.
Chairman

Thomas F. Eagleton
Ranking Minority Member

WVR/MH/cw
Enclosure

FEDERAL EMPLOYEE RETIREMENT SYSTEM

This language amends the dates on which current federal employees who are subject to the Civil Service Retirement and Disability System and who are not required to participate in the new Federal Employees' Retirement System may elect to participate in the new system and the system's new thrift savings plan. Under current law, employees may elect to participate in the new retirement plan begining July 1, 1987. Alternatively, those employees remaining in the current civil service retirement plan may elect to participate in the new thrift savings plan beginning July 1, 1987. This languages amends these provisions by changing the starting date to April 1, 1987.

REVENUE FORGONE APPROPRIATION

This amendment would revise the method for computing the revenue forgone appropriation for the United States Postal Service. This provision implements one of the recommendations made by the Postal Rate Commission in its report of June 18, 1986 on perferred postal rates.

Currently, the federal government provides the Postal Service with funds to capture the revenue shortfall created by allowing eligible mailers lower postage rates than would otherwise be available to them. In its study, the Postal Rate Commission concluded that the present method for calculating revenue forgone results in an overstatement of the amount, thus inflating the amount Congress is requested to appropriate. The Committee endorses the Postal Rate Commission recommendation that a new method, the "equal markup" method be instituted to more accurately capture the revenue forgone.

CBO COST ESTIMATES

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

Rudolph G. Penner
Director

July 31, 1986

Honorable William V. Roth, Jr.
Chairman
Committee on Governmental Affairs
United States Senate
340 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

The Congressional Budget Office has prepared the attached table analyzing the budget impact of the reconciliation recommendations adopted by the Senate Committee on Governmental Affairs on July 30, 1986.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

Edward Gramlich

for Rudolph G. Penner

cc: Honorable Thomas F. Eagleton
Ranking Minority Member

RECONCILIATION RECOMMENDATIONS OF THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS--FEDERAL BUDGET IMPACT RELATIVE TO CURRENT LAW AND THE BUDGET RESOLUTION BASELINE (by fiscal year, in millions of dollars)

	1987	1988	1989	1990	1991
Authorization					
Postal Service a/					
Estimated Authorization Level	---	---	-210	-300	-300
Estimated Outlays	---	---	-210	-300	-300
Direct Spending					
Civil Service Retirement b/					
Estimated Budget Authority	664	64	66	56	37
Estimated Outlays	-247	22	38	42	25
Revenues b/	-42	2	3	4	5

NOTE: Negative outlays represent a decrease in spending and in the deficit. Negative revenue figures represent a decrease in revenues, and an increase in the deficit.

a. The Committee recommendations would revise the basis for determining costs to be recovered by revenues plus appropriations for reduced-rate categories of mail. If this legislation is enacted, and if appropriations in future years are adjusted correspondingly, revenue forgone payments would be an estimated $594 million in 1989, $539 million in 1990, and $575 million in 1991. It is possible that these amounts would be insufficient to maintain current postal rates for preferred mailers.

b. The Committee recommendations would allow most federal civilian employees to begin contributing to the government retirement program's thrift savings plan and to begin participating in the new retirement system three months earlier than under current law. Earlier employee contributions would increase offsetting collections (negative outlays) in 1987, but would increase outlays in subsequent years as a result of larger withdrawals. In addition, because the employee contributions are tax deductible, the government's tax revenues would drop in 1987, while in subsequent years the larger withdrawals would result in higher tax revenues.

COMMITTEE ON LABOR AND HUMAN RESOURCES

Title VIII

ORRIN G. HATCH, UTAH, CHAIRMAN

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HAYDEN G. BRYAN, STAFF DIRECTOR
THOMAS M. ROLLINS, MINORITY STAFF DIRECTOR/CHIEF COUNSEL

United States Senate
COMMITTEE ON LABOR AND
HUMAN RESOURCES
WASHINGTON, DC 20510

July 25, 1986

Honorable Pete V. Domenici
and Honorable Lawton Chiles
Chairman and Ranking Minority Member
Committee on the Budget
United States Senate
Washington, D.C. 20510

Dear Pete and Lawton:

In compliance with the Senate Budget Committee procedures for reporting a reconciliation bill in response to the First Concurrent Budget Resolution for Fiscal Year 1987, we hereby submit a complete package of proposed legislative changes for inclusion in Title VIII of that bill.

This package includes: (1) the legislative language to implement the reductions, (2) the accompanying report language, and (3) a CBO cost estimate for the Senate Labor Committee amendments to the Guaranteed Student Loan program and the Education loan asset program. The Committee is pleased to report a reconciliation package which meets the required savings in fiscal year 1987 as well as over a three-year period. These three-year savings of $1.5 billion are not expected to adversely affect beneficiaries most in need.

Sincerely,

Edward M. Kennedy
Edward M. Kennedy
Ranking Minority Member

Orrin Hatch
Orrin G. Hatch
Chairman

enclosures

REPORT LANGUAGE ON GUARANTEED STUDENT LOAN PROGRAM:

The Guaranteed Student Loan (GSL) Program has been under close review in the past few years, both by the members of the Committee and members of the Senate as a whole. Last year, a great deal of time was spent debating legislation to save $800 million over 3 years as instructed by P.L. 99-272, the Consolidated Omnibus Budget Reconciliation Act of 1985. Subsequently, the Subcommittee on Education, Arts and Humanities began work on S. 1965, a bill to reauthorize the Higher Education Act of 1965. Five cost saving provisions currently included in Senate-passed S. 1965 have been extracted and one additional proposal submitted as legislative language necessary to achieve cost savings pursuant to this Committee's reconciliation instructions in the Concurrent Resolution on the Budget--FY87, S. Con. Res. 120. Two of the above provisions, increasing the interest rate on GSL's and reducing the lender yield, were to be effective as of July 1986 under language in Senate-passed S. 1965. The effective date is changed to October 1, 1986. Outlay savings achieved by the adoption of this language include $795 million in budget authority and $680 million in outlays over a three year period.

(1) NEEDS BASIS FOR THE GUARANTEED STUDENT LOAN PROGRAM

This language requires that all applicants undergo a financial needs test to receive a GSL. Under current law, a student from a family with an annual income under $30,000 is automatically eligible for a loan. By requiring all students to undergo a needs test, the Committee seeks to ensure that students are borrowing according to their need. Concern has been raised about the exceptionally harsh treatment of low income independent students with children when instituting an across-the-board needs test. The Committee responded to this concern by clarifying the treatment of independent students (see section on independent student).

(2) INTEREST RATE FOR NEW BORROWERS

The interest rate for new borrowers in the GSL program is increased from 8% to 10% once the student begins repayment.

(3) RULE FOR REINSURANCE BASED ON DEFAULT RATES

The Committee language also changes the rate of reimbursement of claims paid on defaulted loans to the guarantee agencies (known as reinsurance) from the current 100%-90%-80% to 100%-80%-70% for new loans. While still providing incentives for the agencies to maintain a low default rate (less than 5%) and thus receive 100% reimbursement, this change will encourage enhanced due diligence and an increased emphasis on default prevention for those agencies with a higher default rate. The increase in the amount of student loans in default is of great concern to the Committee and this is one step toward lowering the default rate.

(4) SPECIAL ALLOWANCE

The special allowance which the Federal government pays to the banks to encourage their participation has been decreased in this language from the current 3.5% to 3.0%. The Committee does not intend to force any banks out of the program; rather, it is the Committee's finding that as the GSL program has grown, the banks have made a profit from this program. In the Committee's view, the banks can and should share in cost saving measures.

(5) DEFINITION OF INDEPENDENT STUDENT

The definition of independent student for all financial aid programs has been amended to require that unmarried students and students without dependents under 23 years of age must satisfy the established criteria for the award year plus the two previous years. The following criteria requires that the student:

- Does not live for more than 6 weeks a year with his/her parents,
- Is not claimed as a dependent for Federal income tax purposes by his/her parents, and
- Does not receive more than $750 in financial assistance from his/her parents.

Students who are 23 years of age and above, or married students with dependents, fall under the current rule of satisfying the criteria for the award year plus one previous year.

ADDITIONAL PROPOSAL

Additionally, the Committee requires that $20 million be returned in fiscal year 1987 to the Department of the Treasury from state guarantee agency advances.

All of the above mentioned language assumes an effective date of October 1, 1986.

REPORT LANGUAGE ON EDUCATION LOAN ASSET SALES:

The College Housing Loan program supports financing for the construction, renovation, and acquisition of college and university housing and related student service facilities through direct, subsidized loans made from a revolving fund. This financing is intended to help higher education institutions to accommodate increases in resident student enrollments and also to support energy conservation rehabilitation of existing facilities.

Since the inception of this program in 1950, over $3.79 billion in loans has been awarded, with about $2.676 billion remaining outstanding at the close of fiscal year 1984. Eligible applicants are institutions of higher education, certain vocational institutions, teaching hospitals, and public or private non-profit college housing agencies.

Loan capital has been provided both with Department of the Treasury borrowings and through the marketing of Government National Mortgage Association public securities. New loan commitments may be made from the revolving fund's available resources. The authorized level of new loans must be specified each year in appropriations language. In FY84 and FY85, $40 million in loan authority was authorized annually.

The Committee members were instructed to achieve $579 million in savings in the College Housing Loan Program in FY87. That will be achieved by directing the Secretary of Education to sell approximately 50% of the loan obligations held by the Department of Education on this program. These loans have a face value of $1.3 billion. The Department of Education estimates that the sale of these loans will result in a profit of $579 million in fiscal year 1987. The proceeds from this sale will be used to pay off a portion of the Department of Education's debt to the Department of the Treasury. Language is included to clarify the Department of Education's authority to sell these loans at a discount. The Secretary of Education is directed to compute the discount which may be offered to a borrower as an inducement to early repayment in an amount determined to be in the best financial interests of the Federal government.

Also, language is included which states the Department of Education's authority to sell Higher Education Academic Facilities Loans. The reconciliation instructions assumed savings in the Higher Education Academic Facilities Loan program after FY87.

CBO COST ESTIMATE

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

Rudolph G. Penner
Director

July 25, 1986

Honorable Orrin G. Hatch
Chairman
Committee on Labor and Human Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Congressional Budget Office has prepared the attached cost estimate of the legislative changes sent by the Senate Committee on Labor and Human Resources to the Senate Budget Committee, July 25, 1986. This legislation would make changes in the Guaranteed Student Loan program, Title VII of the Higher Education Act of 1965, and the College Housing Act of 1950, for the purpose of meeting the reconciliation instructions included in the Concurrent Resolution on the Budget--Fiscal Year 1987 (S. Con. Res. 120).

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

Rudolph G. Penner

cc: Honorable Edward M. Kennedy
Ranking Minority Member

CONGRESSIONAL BUDGET OFFICE

COST ESTIMATE

July 25, 1986

1. BILL NUMBER: None.

2. BILL TITLE: Education Budget Savings Act of 1986.

3. BILL STATUS:

   As passed by the Senate Committee on Labor and Human Resources on July 25, 1986 and sent to the Senate Budget Committee.

4. BILL PURPOSE:

   The purposes of the bill are: (1) to make changes in spending in the Guaranteed Student Loan program, and (2) to amend Title VII of the Higher Education Act of 1965 and the College Housing Act of 1950 regarding the sale of loan obligations, all for the purpose of deficit reduction consistent with the reconciliation instructions included in the Concurrent Resolution on the Budget--Fiscal Year 1987 (S. Con. Res. 120).

5. ESTIMATED COST TO THE FEDERAL GOVERNMENT:

   This bill is intended as a reconciliation act. We have, therefore, done the estimates relative to the baseline used for S. Con. Res. 120. The baseline differs from current law in that it reflects the full projected cost of the current programs for the next five years.

TABLE 1. ESTIMATED FEDERAL COSTS RELATIVE TO BASELINE UNDER THE ECONOMIC ASSUMPTIONS CONSISTENT WITH THE CONCURRENT RESOLUTION ON THE BUDGET--FISCAL YEAR 1987

(by fiscal year, in millions of dollars)

	1987	1988	1989	1990	1991
Changes to baseline:					
Guaranteed Student Loans					
Budget Authority	-55	-235	-505	-675	-755
Outlays	-30	-185	-465	-650	-735
College Housing and Higher Education Loan Asset Sales					
Budget Authority	---	-15	-9	-8	-7
Outlays	-579	-314	94	94	118
Bill Total:					
Budget Authority	-55	-250	-514	-683	-762
Outlays	-609	-499	-371	-556	-617

The costs of the bill fall within budget functions 500 and 900.

Basis of Estimate:

Guaranteed Student Loan Program

This legislation makes several programmatic changes to the Guaranteed Student Loan (GSL) program. Specifically, these changes would: (1) Limit program eligibility to remaining financial need. This would be done by both eliminating the current Guaranteed Student Loan (GSL) family contribution schedule and the $30,000 family income cap and using the "uniform methodology" currently in federal regulations for approving needs analysis systems for other federal student aid programs. (2) Change the definition of an independent student to require any single student under age 23 without dependents to prove two prior years of financial independence from their parents. (3) Increase the interest rate on GSLs from 8 to 10 percent when the loan enters repayment. (4) Reduce lender yield on new loans by .50 percent. (5) Lower the current reinsurance triggers for the federal share of default claims from 100 percent/90 percent/80 percent to 100 percent/80 percent/70 percent and (6) Recall $20 million of the state guarantee agency advances in 1987. The estimates, consistent with bill language, assume an October 1986 implementation date. In combination, these proposals reduce budget authority in 1987 by $55 million and outlays by $30 million. By 1991, budget authority is reduced by $755 million and outlays by $735 million.

In 1987, CBO projects that the GSL program would cost $3.2 billion under current law. This level reflects $9.75 billion in new loan commitments to 4.25 million students and a cumulative outstanding loan volume over $50 billion. Below is a brief discussion of the separate proposals and the major programmatic assumptions behind the budget estimates.

This bill would repeal the current GSL family contribution schedule published by the Department of Education, eliminate the current $30,000 income cap, and require the determination of financial need to be done through the "uniform methodology" (UM) financial needs analysis. The UM is currently in federal regulations for approving needs analysis systems used in other federal student aid programs.

As a result of the UM needs test, close to one million students are estimated to either have their borrowing levels held below the maximum levels or lose eligibility for loans altogether. Most of those affected would either be dependent students whose family income is close to the current $30,000 income cap and who attend relatively low-cost schools, or dependent undergraduates whose family income is in excess of $30,000 who would be expected to contribute more of their income to education due to a broader definition of income and who would be expected to make a family contribution from assets. In addition, independent students would also be affected since these students would be expected to contribute a significant amount of their earnings towards their education.

Since borrowers could be required to apply for their loans through a needs application administered or contracted by the Department of Education, the federal government would incur increased federal application processing costs. The 1985 cost of processing an application was $7.75. Adjusting for inflation and assuming the federal government would process about 1.5 million more applications than are currently processed in the Pell Grant program, federal administrative costs would increase by about $13 million in 1987.

In addition to the change in the needs analysis eligibility criteria, S. 1965 would affect another 45,000 students, who are single independent students under 23 years of age without dependents, by the redefinition of an independent student.

These students would be reclassified as dependent students in determining family resources and financial need. It is assumed that the majority of these students could not borrow as dependent students.

The lender yield on newly guaranteed loans in the GSL program would be reduced by .50 percent to a total yield to lenders of the 91-day Treasury bill rate plus 3.0 percent. The estimate of this proposed change reflects the change in yield on all new loan commitments. The cost estimate associated with this provision does not reflect any change in lender behavior. If lenders dropped out of the program as a result of lower total yields, the budget savings from the provision would be higher; however, eligible GSL borrowers would no longer have GSL loan capital available to them.

This bill changes the federal reinsurance trigger from 100 percent/90 percent/80 percent to 100 percent/80 percent/70 percent on all new loans. Guarantee agencies would be responsible for covering 10 percent more of default costs on any new loan as of 1987 when the guarantee agencies annual default claims exceed 5 percent of their cumulative matured loans. The federal reinsurance on GSLs will remain 100 percent for the first 5 percent of default claims.

Outstanding advances to state guarantee agencies currently exceed $170 million. The Consolidated Omnibus Budget Reconciliation Act of 1986 recalls $75 million of these advances during 1988. This bill would recall an additional $20 million of the advances in 1987.

Sale of Loan Obligations

This bill would require the Secretary of Education to sell college housing and higher education facilities loan obligations in a manner consistent with the directions in S. Con. Res. 120. CBO estimates that the Secretary's plan for the sale, initially proposed in the President's budget for fiscal year 1987, will meet the targets specified in the resolution. CBO assumes that the loans would be sold without future recourse to the federal government.

The proposed plan calls for the sale of most of the existing portfolio of housing and facilities loans over the four year period 1987-1990. The loans proposed for sale have a principal value of $2.4 billion. The sale price, realized over the four year period, is estimated to be $1.1 billion. The price is discounted from the principal value to reflect the time value of the interest and principal payments over the period of the loan.

In selling the loans, the federal government would realize a reduction in expected future principal repayments and interest revenue over the life of the loans, partially offsetting the collections from the sale. This reduction is estimated to be $500 million over the five year period 1987-1991, and $2.6 billion over a twenty year period.

6. ESTIMATED COST TO STATE AND LOCAL GOVERNMENT:

The Congressional Office has determined that the budgets of state and local governments would not be affected directly by the enactment of this bill.

7. ESTIMATE COMPARISON: None.

8. PREVIOUS CBO ESTIMATE: None.

9. ESTIMATE PREPARED BY:

Deborah Kalcevic and Ken Pott (226-2820)

10. ESTIMATE APPROVED BY:

C.G. Nuckols

for James L. Blum
Assistant Director
for Budget Analysis

COMMITTEE ON SMALL BUSINESS

Title IX

LOWELL WEICKER, JR., CONNECTICUT, CHAIRMAN

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ROBERT J. DOTCHIN, STAFF DIRECTOR
ROBERT M. WILSON, CHIEF COUNSEL
JOHN W. BALL III, MINORITY CHIEF COUNSEL

United States Senate
COMMITTEE ON SMALL BUSINESS
WASHINGTON, DC 20510

July 29, 1986

Honorable Pete V. Domenici
Chairman
Honorable Lawton Chiles
Ranking Minority Member
Committee on the Budget
United States Senate
Washington, D.C. 20510

Dear Pete and Lawton:

In accordance with the reconciliation instruction included in section 2(t) of S.Con.Res. 120, enclosed are the changes in laws within the Committee's jurisdiction to achieve cost savings to meet the reconciliation instruction. Also enclosed is the Committee's report to accompany these statutory provisions.

On July 24, 1986, the Committee met and unanimously reported out these changes. The Committee rejects the assumptions underlying the reconciliation instruction to sell the disaster loan portfolio without recourse to the federal government. Instead, the Committee's recommendation directs the Secretary of the Treasury to sell section 503 certified development company loans now held by the Federal Financing Bank. The Committee believes that these loans are among the best quality loans made by the Small Business Administration. Indeed, the Committee has been advised that these loans may indeed sell at a premium, thereby providing revenues to the Treasury and reducing the deficit. It is the Committee's firm judgment that to direct the sale of loans on a basis other than with recourse will only be wasting valuable assets and add to deficits.

Sincerely,

Dale Bumpers
DALE BUMPERS
Ranking Minority Member

LOWELL WEICKER, JR.
Chairman

THE SENATE COMMITTEE ON SMALL BUSINESS
SUBMITS THE FOLLOWING
REPORT

To Accompany Transmittal of Changes in Law
To Achieve Cost Savings Required by the
Reconciliation Instruction Pursuant to S. Con. Res. 120,
to the Senate Committee on the Budget

The Senate Committee on Small Business, pursuant to Sec. 2(t) of S. Con. Res. 120 submits changes in law to achieve cost savings as required by the Committee's reconciliation instruction.

I. RECONCILIATION INSTRUCTION

Section 2(t) of S. Con. Res. 120 provides that:

> The Senate Committee on Small Business shall report (1) changes in laws within its jurisdiction which provide spending authority, as defined in section 401(c)(2)(C) of the Congressional Budget Act of 1974, sufficient to reduce budget authority and outlays; (2) changes in law within its jurisdiction other than those which provide spending authority as defined in section 401(c)(2)(C) of the Act, sufficient to achieve savings in budget authority and outlays; or (3) any combination thereof, as follows: decrease budget authority by $438,000,000 and outlays by $343,000,000 in fiscal year 1987; decrease budget authority by $399,000,000 and outlays by $55,000,000 in fiscal year 1988; and decrease budget authority by $223,000,000 and outlays by $14,000,000 in fiscal year 1989.

Although not specifically binding on the Committee, assumptions were made by the conferees in S. Con. Res. 120 in developing this reconciliation instruction. The instruction to the Small Business Committee was based on the assumption that the entire Disaster Loan portfolio held by the Small Business Administration (approximately $4.4 billion) would be sold over four years at a rate of approximately one billion dollars a year. The resolution, however, also assumes that the Disaster Loan program at the SBA would continue to be funded at current levels. Therefore, appropriations of $450 million in fiscal year 1988 and $600 million in fiscal year 1989 would be required.

The Committee has jurisdiction over federal spending programs at the Small Business Administration which are in budget functions 370 and 450. Cuts of the magnitude required by this instruction, particularly the $343 million in outlay savings in fiscal year 1987, can only be achieved by the sale of loan assets. The Committee's primary considerations have focused on which of SBA loans should be sold and on whether they should be sold with recourse to the Federal government.

II. SUMMARY OF CHANGES IN LAW

After careful consideration, the Committee rejects the proposal in the Budget resolution to sell disaster loans in function 450 of the budget and recommends, instead, the sale of Certified Development Company debentures issued pursuant to section 503 of the Small Business Investment Act of 1958 which are now held by the Federal Financing Bank. These debentures would appear in function 370 of the budget.

The Committee submits the following recommendations as changes in laws under its jurisdiction:

The Secretary of the Treasury is authorized and directed to sell section 503 certified development company debentures now held by the Federal Financing Bank in sufficient amounts to reduce outlays by $361,000,000 in fiscal year 1987, $55,000,000 in fiscal year 1988 and $14,000,000 in fiscal year 1989; provided that such sales shall be with full recourse to the Federal government; and provided further that the sale of debentures discharges SBA's liability to the Federal Financing Bank. The Administration and the Secretary of the Treasury are precluded from selling any other loans to achieve cost savings.

III. DISCUSSION OF THE NEED FOR LEGISLATION

A. Background and Legislative History

The President's budget submission for fiscal year 1987 again proposed the elimination of the Small Business Administration (SBA) as an independent agency, the elimination of all of SBA's credit assistance programs and the transfer of the Agency's loan portfolio to the Department of the Treasury for liquidation and sale.

In its recommendations and views submitted by letter on March 5, 1986, to the Senate Budget Committee, this Committee strongly opposed the President's plan. Instead, the Committee recommended changes in SBA programs then embodied in the conference agreement on the budget for fiscal year 1986, which had not yet been enacted. With the enactment of P.L. 99-272, the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985, $2.5 billion of outlay savings were achieved through significant program reductions and restructuring at SBA.

The Committee's views to the Budget Committee also expressed strong reservations about the proposed loan asset sales in the President's budget because, in the long run, the sale would cost the federal government.

However, during full Senate consideration of S. Con. Res. 120, on April 30, 1986, Chairman Weicker in a colloquy with Senator Domenici agreed to a pilot program to sell $220 million of business loans a year for fiscal years 1987-89 in order to test the concept of loan asset sales.

B. Disaster Loan Program

The SBA disaster loan fund is a revolving fund in function 450 of the budget. The budget resolution assumes that the entire disaster loan portfolio would be sold over four years. The resolution also assumes that the program would continue through fiscal year 1989 at current levels. A summary of the anticipated savings from the sale of such loans is as follows:

FY 1987		FY 1988		FY 1989		TOTAL	
BA	0	BA	0	BA	0	BA	0
-438	-343	-399	-55	-223	-14	-1060	-412

Under the disaster loan program, SBA has been making below-market loans at four and eight percent to homeowners, businesses and farmers who are victims of natural disasters for uninsured losses. Although P.L. 99-272 eliminated the eligibility of agricultural enterprises for SBA disaster loan assistance, there are currently over 47,000 farm loans in the portfolio. Of this number only about 35,000 are current on repayments.

The Committee rejects the proposal in the budget resolution for several reasons.

First, the idea of selling the entire portfolio which supports the revolving fund, while simultaneously continuing the program, makes little sense. According to the SBA, under the assumptions in the resolution, the program could be maintained at current funding levels in fiscal year 1987 without an appropriation, but in fiscal year 1988 and fiscal year 1989 appropriations would be required. SBA estimates appropriations of $450 million in fiscal year 1988 and $600 million in fiscal year 1989 will be necessary. It makes little sense to sell the portfolio only to have to recapitalize the fund in fiscal year 1988.

Second, if sold without recourse to the federal government, the loans would be very deeply discounted. The CBO estimated that the portfolio would sell for about 38 cents for every dollar of face value on the loan. Investment banking firms have informed the Committee that without a guarantee the portfolio would have to be sold at firesale prices, if they could be sold at all.

Additionally, the Committee is concerned about protections for homeowners, businesses and farmers who have been the recipients of SBA disaster assistance. Sale of these loans to private investors without recourse to the government would mean that these borrowers, in the event of default, would be subject to immediate foreclosures by potential private investors. This would be particularly harsh for farmers who have SBA disaster loans, given the presently depressed state of the farm economy. SBA indicates that currently only about 70 percent of farm loans in the portfolio are current.

C. Section 503 Certified Development Company Program

Under the Section 503 Certified Development Company (CDC) program, the SBA certifies local development companies to make fixed-asset "bricks and mortar" loans to growing small businesses for planned expansion and job creation. The small business concern receives 50 percent of the project financing from a bank, invests 10 percent of the cost from its own funds, and SBA guarantees a debenture issued by the CDC for the remaining 40 percent of the project cost, which must be secured by adequate collateral. The SBA-guaranteed debenture is then sold to the Federal Financing Bank. The borrower's promissory note to the CDC and accompanying security are assigned by the CDC to SBA.

Since the program's inception in 1980, over 590 CDC's have been certified by SBA and over 5,400 loans have been approved by the Small Business Administration. According to SBA, the actual loss rate in the program has been about 1.5 percent although the ultimate loss rate may prove somewhat higher, since this is a fairly unseasoned program. The Committee believes the 503 loans are of a far better quality than the disaster loan portfolio, since they are more highly collateralized and to date have shown a very high currency rate. This view is supported by comments the Committee has received from investment banking firms.

It is difficult to predict with any certainty what any loan may sell for in the private capital market, but estimates from both governmental and private sources indicate that the 503 loan portfolio would yield a much higher return, even without recourse to the government, than the disaster loan portfolio. This in part is explained by the simple fact that average yield on the 503 portfolio is 11.2%, while the yield on the Disaster loan program is 4.4%.

The Administration estimates that if sold on a non-recourse basis Section 503 loans would get about 49 cents for every dollar of face value. CBO estimates the portfolio could sell for as much as 60-70 cents. One investment banking firm estimated that the portfolio could sell for up to 83 cents on the dollar. By contrast, if sold with recourse to the Federal government, which implies that the investor assumes virtually no risk of non-payment, the portfolio would sell at a premium to face value since the average yield is some 200 to 300 basis points above comparable market yields. Consequently, the government would expect to make a "profit" by selling the loans for $1.12 to $1.13 on the dollar. From the standpoint of savings to the Government, Section 503 loans are the better loans to sell.

D. Loan Asset Sales

A fundamental question for the Committee in authorizing sale of loans at SBA as a test of the pilot concept is whether loan assets should be sold with or without recourse to the Federal government. The sale of loans on a non-recourse basis has two consequences: 1) the loans will have to be sold at much more deeply discounted prices, and 2) in the event of default, investors may have no choice but to liquidate the loan, including recourse to collateral.

The Committee takes note of the statement of the managers on the conference agreement on S. Con. Res. 120 for guidance in meeting the reconciliation instruction:

> The conferees hope that the appropriate committees of the Congress will consider legislation that establishes specific guidelines for the sale of these assets. Such legislation should address the process and terms of asset sales, including whether there should be any form of Federal guarantee and what kind of protections should be provided to borrowers.

> The conferees believe that specific legislative guidelines for loan asset sales should be established to insure that the sales occur successfully and expeditiously without adverse consequences.

This discussion of loan asset sales clearly implies that authorizing Committees should make final decisions on whether a sale should be with or without recourse. Notwithstanding this clear statement by the managers of the conference, this Committee has been advised by the Congressional Budget Office (CBO) and the Office of Management and Budget (OMB) that loan asset sales will be scored as offsetting receipts only if they are sold without recourse to the Federal government.

On July 24, 1986, Chairman Weicker received a letter from James Miller, Director of OMB, which states, "...the Administration intends to score as borrowing, rather than as off-setting collections, all sales of loan assets with recourse...while we support the sale of loan assets without recourse, sale with recourse should be scored as agency debt."

A memorandum from the Congressional Budget Office (CBO) provided to the Committee staff, presented the following view:

> The sale of federal loan assets with recourse to the government or with a federal guarantee is a form of borrowing in that the government has entered an obligation to make a series of payments to an investor that is not dependent on the stream of payments on the underlying assets. The loan asset "sale" with recourse, thus, is not a genuine sale because it gives rise to a liability: the unconditional obligation to pay by the federal government. If loan assets were removed from the books of the federal government by such "sales", the government would be left with unrecognized, but potentially sizable, liabilities.
>
> In contrast, loan asset sales that are final and without recourse to the government entail only an exchange of one asset--cash--for another--loans. The investor is entitled only to the stream of payments on the purchased assets, and is without further claim on the federal government.

The Senate Small Business Committee fundamentally disagrees with the proposition that no budget savings would be achieved by the sale of loan assets with recourse and rejects the notion.

First, the policy as stated in this memorandum suggests that all loans guaranteed by the Federal government will be defaulted. The memorandum further misstates the nature of the federal guarantee, calling it an "unconditional" obligation to pay on the part of the government. Obviously, the liability is contingent only.

The Committee believes that it would be more appropriate to provide for an amount likely to offset anticipated losses, rather than to assume that an entire portfolio will end in default. Sound public policy requires notice of the historical track record of a portfolio and its historical loss rate. To date, the actual loss rate on 503 loans is only 1.5 percent, and is anticipated to increase only to 5 percent over a period of years. The assertion that a federal guarantee of such loans amounts to a direct federal loan simply flies in the face of experience.

Secondly, under the CBO/OMB analysis, proceeds from a sale of assets with recourse are not scored as off-setting receipts. This begs the question of where the money goes and amounts to an economic article of faith against federal loan guarantees which ignores reality. Indeed, when the government sells an asset and receives cash the proceeds from the sale can be invested or used to reduce the deficit.

The Committee further notes that this treatment of loan asset sales is absolutely contrary to past budget practices. OMB Director Miller's letter states, "To minimize disruption in the short term, the Administration would agree to treat the limited number of existing loan sales with recourse (such as GNMA tandem, VA loans and new RHIF loans) as off-setting collections in fiscal year 1987". This treatment, thus, is an abrupt change in the rules on score-keeping and is contrary to the practice followed in the Reconciliation bill, P.L. 99-272, which was signed into law on April 7, 1986. Under that law we note that loan asset sales with recourse by the Secretary of Housing and Urban Development (HUD) were treated as off-setting receipts, thus, producing budget savings.

Even assuming a 100 percent default rate, the government still benefits from an immediate sale of a loan portfolio through the time value of money. Quite simply, a dollar in hand today is worth more than a dollar received tomorrow.

The Committee concluded, after consultation with financial experts, that the market place was likely to discount non-guaranteed loans far disproportionately to the actual risk of loss to the federal government, and that sales without recourse would cost the Treasury millions of dollars more than any reasonably anticipated losses from such guarantees.

The conference report states that loan sales should be without adverse consequences. Using CBO's conservative estimate that the 503 loan portfolio sold without recourse would return about 60-70 cents on a dollar it would be an "adverse consequence" for the government to lose over $250 million, based on a portfolio of $800 million, in order to avoid a contingent liability of approximately $40 million.

Further, selling loan assets without recourse so as to remove the government entirely from the process allows no protection for borrowers whom Congress has decided should receive federal credit assistance.

And, finally, if the purpose of reconciliation is deficit reduction, it is in the government's best interests to maximize its receipts from the sale of assets. It would be a waste of public assets to sell loans at a deep discount required by the market under a non-recourse sale.

IV. COMMITTEE RECOMMENDATION

The Committee recommendation directs the Secretary of the Treasury to sell debentures from the portfolio of Section 503 Certified Development Company loans in such amounts for fiscal years 1987-1989 as to meet the Concurrent Budget Resolution reconciliation instructions. Thus, in order to meet the required outlay savings for fiscal year 1987, the Secretary of the Treasury shall sell Section 503 debentures in such amounts as to achieve net realization of $361 million in fiscal year 1987; $55 million in savings in fiscal year 1988; and $14 million in savings in fiscal year 1989.

For fiscal year 1987, the Committee directs the Secretary to sell $361 million in Section 503 debentures, although under its budget reconciliation instructions, the Committee was ordered to produce only $343 million in savings. The additional $18 million in sales implements the Levin Amendment which sought to provide a cushion for losses to the government which might occur on loans due to eventual defaults over the next three years by the borrower. Under the Levin Amendment, the Treasury is assured of receiving a significant amount in addition to the budget mandated minimum which should provide more than enough to cover shortfalls produced by eventual defaults by borrowers over the next three years.

As the ultimate purchaser and holder of the portfolio, the Secretary of the Treasury is directed to sell the securities to the private sector on a recourse basis. In so doing, the Secretary of the Treasury must of course strive to obtain the optimal market conditions and must tailor the sale of securities in such a manner as to elicit the greatest market interest and response. The Committee believes that the Secretary should actively consult with qualified personnel at the Small Business Administration whose expertise and knowledge of the 503 program will certainly be of assistance. While the Committee gives the Secretary discretion as to the conditions of the sale, it believes that the Secretary should also rely on the advice of investment experts from the private capital markets. The Committee directs the Secretary to consider pooling of the debentures into collective, collateralized, undivided shares of ownership which will allow the targeting and sectoring of the investor market and will increase interest.

The Committee has considered and rejected the course of action proposed by OMB which would have FFB sell debentures without SBA's guarantee, and thus for less than full value, but nonetheless require SBA to make up to FFB any loss which accompanied the sale. This course could circumvent defined policy in existing authorization and appropriations measures defined by Congress and the President.

Despite the policy preference of CBO and OMB that the sale of government loans be made on a non-recourse basis, the Committee has ordered that the sale of Section 503 debentures to the private capital markets be done with the existing SBA guarantee of timely payment of principal and interest. The Federal Government has little if any experience in selling non-recourse paper, and universal predictions by experts in government finance are that non-recourse paper will cost 600 to 700 basis points to the necessary yield and reduce the debentures from investment grade to assets of junk quality.

The Committee believes that common sense dictates that the time value of money alone produces a tangible savings to the government, and that losses on the sale of guaranteed paper can be measured by the actual loss rate and not by some mythical assumption that all loans will be defaulted. Because the sale is on a full-recourse basis, private investors will be able to turn to the Federal Government to make good on their investments in the event of default. The debentures will nevertheless be backed up by collateralized notes issued by the ultimate borrowers, the small business concerns, against which the SBA may seek redress if it is obliged to honor the term of its guarantee. The small business concern traditionally issues a note and commits collateral to the Certified Development Company, which in turn assigns the note and collateral to the Small Business Administration. The SBA will continue to be the holder of the notes and underlying security interests and collateral. In this way, investors will be able to treat 503 paper as a top-grade investment quality, and SBA will retain its security interest in the collateral.

The Committee has provided that with the sale of a debenture, the Administration is relieved of its obligation under its contract of guarantee with the Federal Financing Bank, and that there will be no liability from the Administration to the Federal Financing Bank on account of the discharge of the guarantee. However, the Administration remains as guarantor of the debenture vis-a-vis the eventual purchaser or assignee. In the event of default, the full faith and credit of the United States stands behind the instrument, and the Administration guarantees to the investor timely payment of principal and interest.

The Committee has also mandated that the integrity of existing contractual rights and obligations between the various parties to the Section 503 Certified Development Company program remain intact. Thus, for example, the CDCs shall continue to have the right to receive fees for servicing section 503 loans. The Central Fiscal Agent shall continue, and its rights and responsibilities shall also remain intact.

V. SECTION-BY-SECTION ANALYSIS

Section 901 amends Title V of the Small Business Investment Act of 1958 and creates a new section 506.

Paragraph (a) directs the Secretary of the Treasury to take appropriate action to sell to the public whatever interest the Federal Financing Bank has in debentures issued under the Section 503 Certified Development Company Program in such amounts so as to realize net proceeds of $361 million in fiscal year 1987; $55 million in fiscal year 1988; and $14 million in fiscal year 1989.

Paragraph (b) requires the Secretary to sell all such debentures with full recourse to the Federal government and to preserve the integrity of existing contractual relations between all parties to the 503 Certified Development Company project.

Paragraph (c) provides that the sale of each 503 debenture by the Secretary shall discharge any liability of the Administration to the Federal Financing Bank on the debenture, and shall, therefore, extinguish the guarantee undertaken by the Administration to the Federal Financing Bank. The Administration remains liable to each individual purchaser or assignee of the debenture as guarantor of the interest.

Section 902. In order to achieve the budget savings specified in section 901 of this Act, neither the Secretary of the Treasury nor the Administration shall sell any loans, guaranteed portion of loans, notes or debentures guaranteed by the Administration pursuant either to the Small Business Act of 1953 or the Small Business Investment Act of 1958 except those specified in section 901.

VI. COMMITTEE ACTION

The Committee met in Executive session on July 24, 1986, and unanimously voted to submit these legislative changes to the Senate Budget Committee.

VII. REGULATORY IMPACT STATEMENT

In compliance with Rule XXVI (11)(b) of the Standing Rules of the Senate, it is the Committee's belief that this bill will have no regulatory or privacy impact on the small businesses affected by the legislation.

VIII. COST OF LEGISLATION

In compliance with Rule XXVI of the Standing Rules of the Senate, the Committee estimates that the cost of the legislation will be equal to the amounts indicated by the Congressional Budget Office in the following letter:

CONGRESSIONAL BUDGET OFFICE

COST ESTIMATE

July 29, 1986

1. BILL NUMBER: Not yet assigned.

2. BILL TITLE:

Proposed amendments to the Small Business Investment Act of 1958, for inclusion in the Budget Reconciliation Act of 1986.

3. BILL STATUS:

As ordered reported by the Senate Committee on Small Business, July 24, 1986.

4. BILL PURPOSE:

The proposed amendments to the Small Business Investment Act of 1958 would direct the Secretary of Treasury to sell sufficient Section 503 debentures to result in net proceeds to the federal government of $361 million in 1987, $55 million in 1988, and $14 million in 1989. The assets sold would include a 100 percent guarantee by the Small Business Administration (SBA).

5. ESTIMATED COST TO THE FEDERAL GOVERNMENT:

The table below shows the estimated budget impact of the proposed legislation relative to both current law and the 1987 resolution baseline, adjusted for enacted legislation.

(by fiscal years, in millions of dollars)

	1987	1988	1989	1990	1991
Direct Spending					
Estimated Budget Authority	---	8	11	13	13
Estimated Outlays	---	8	11	13	13

The costs of this bill fall within budget function 900.

Basis of Estimate:

For purposes of this estimate, it was assumed that the Treasury would sell Section 503 assets sufficient to generate net receipts to the Treasury of $361 million in 1987, $55 million in 1988, and $14 million in 1989. Because the weighted average interest rate of the outstanding loans exceeds 11 percent, it is expected that slightly less than the face value of the yearly proceeds will be sold each year.

As specified in the proposed legislation, it is expected that these assets would be sold with the existing 100 percent SBA guarantee. Unlike the sale of assets without a federal guarantee, CBO and the Office of Management and Budget consider loans sold with federal guarantees as a form of borrowing by the federal government. Because receipts from federal borrowing do not affect the deficit, the proceeds of the sale are not shown as a deficit reduction in the year received. The cash proceeds, however, reduce the need for regular Treasury market borrowing. Interest costs, on balance, would be higher because the forgone interest on the loans sold exceeds the amount saved on regular, lower-cost Treasury borrowing. The estimated costs shown in the above table represent the net difference in the government's interest costs.

6. ESTIMATED COST TO STATE AND LOCAL GOVERNMENTS: None.

7. ESTIMATE COMPARISON: None.

8. PREVIOUS CBO ESTIMATE: None.

9. ESTIMATE PREPARED BY:

Mary Maginniss (226-2860) and Kathy Ruffing (226-2880)

10. ESTIMATE APPROVED BY:

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